PROMISSORY NOTE

$3,492,000.00

Uniondale, New York
Dated: February 24, 1999
Due: May 20, 2002

FOR VALUE RECEIVED, PRESIDENT R.C.— ST. REGIS MANAGEMENT COMPANY (the "Undersigned"), a New York general partnership, agrees and promises to pay to the order of Miller & Schroeder Investments Corporation (the "Lender"), its endorsees, successors and assigns (collectively, the "Holder"), at its principal office at 220 South Sixth Street, Suite 300, Minneapolis, Minnesota 55402, or such other place as the Holder may from time to time designate, the principal sum ("Principal") of Three Million Four Hundred Ninety Two Thousand Dollars ($3,492,000) or so much thereof as remains unpaid from time to time, together with interest on the Principal Balance (as later defined) at the rate of interest hereinafter set forth, in coin or currency, which, at the time or times of payment, is legal tender for the payment of public and private debts in the United States of America. This Note shall be payable in the following manner and on all the following terms and at the following times:

1. DEFINITIONS. For purposes of this Note the following terms shall have the following meanings:

"Loan Agreement" shall mean the Loan Agreement of even date herewith entered into between the Undersigned, as borrower, and the Lender, as lender, wherein the Lender has agreed to lend to the Undersigned the Principal of this Note subject to compliance with the terms and conditions of such agreement.

"Maturity Date" shall mean May 20, 2002.

"Monthly Payment" shall mean the payments of interest or the equal payments of principal and interest due with respect to this Note on each Monthly Payment Date pursuant to Section 7.

"Monthly Payment Date" shall mean March 20, 1999 and the twentieth day of each month thereafter to and including the Maturity Date.

"Note" shall mean this Promissory Note, in the principal amount of $3,492,000, issued by the Undersigned to the Holder pursuant to the Loan Agreement.

"Principal Balance" shall mean the Principal from time to time outstanding and unpaid on this Note.

Terms not defined herein or elsewhere in this Note shall have the same meaning as defined in the Loan Agreement.

2. DISBURSEMENT. The Undersigned hereby acknowledges receipt of the sums evidenced by this Note.

3. INTEREST RATE. The Principal Balance of this Note at the close of each day shall bear interest at the following per annum rates of interest:

a. *Rate*. From and after the date hereof up to and including the Maturity Date, the Principal Balance shall bear interest at an annual rate equal to ten and twenty five one hundredths percent (10.25%) (the "Interest Rate").

b. *Default Rate*. If a Default (as later defined) occurs under this Note, then, at the option of the Holder hereof, during the entire period during which such Default shall occur and be continuing, interest shall be payable on the Principal Balance at a per annum rate of interest (the "Default Rate") equal to the lesser of: (i) the maximum lawful rate of interest permitted to be paid on this Note; or (ii) Four Percent (4%) plus the Interest Rate then in effect ("Default Rate") whether or not the Holder has exercised its option to accelerate the maturity of this Note and declare the entire Principal Balance due and payable.

4. BASIS OF COMPUTATION. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) thirty (30) day months. Interest shall commence as to the Principal Balance on the date hereof.

5. SERVICING FEE. A servicing fee on the unpaid principal balance of this Note from time to time outstanding (computed on the same basis as interest pursuant to Section 4) shall accrue with respect to the Principal Balance from the date hereof at a per annum rate equal to one-fourth of one percent (0.25%) to May 20, 1999, and one-eighth of one percent (0.125%) thereafter to the Maturity Date. Such servicing fee shall be payable by the Undersigned to the Lender on each Monthly Payment Date and any accrued but unpaid servicing fee shall also be payable upon prepayment in full of this Note and upon maturity of this Note.

6. LATE CHARGE. In the event that any payment required hereunder is not paid within fifteen days after the due date thereof, the Undersigned agrees to pay a late charge of $.04 per $1.00 of unpaid payment to defray the costs of the Holder incident to collecting such late payment. This late charge shall apply individually to all payments past due and there will be no daily pro rata adjustment. This provision shall not be deemed to excuse a late payment or be deemed a waiver of any other rights the Holder may have including the right to declare the entire Principal Balance and interest immediately due and payable.

7. TERMS OF PAYMENT. This Note shall be payable as follows:

a. Commencing on March 20, 1999, and continuing on the twentieth day of each month thereafter up to and including May 20, 1999, interest only payments shall be paid, and

b. Commencing on June 20, 1999, and continuing on the twentieth day of each month thereafter to and including the Maturity Date, the Principal Balance, together with interest thereon, shall be payable in equal monthly installments of principal and interest; provided that such Principal Balance shall be payable on such earlier date as payment hereunder shall have been accelerated by virtue of the occurrence of an Event of Default hereunder at which time the entire unpaid Principal Balance hereof and all accrued and unpaid interest thereon, and all other charges payable pursuant to the terms hereof shall in any event be fully due and payable.

8. APPLICATION OF PAYMENTS. So long as a Default does not exist, all payments shall be applied first to any costs of collection, then to late charges, then to interest and servicing fees and then to Principal Balance, except that if any advance made by the Holder under the terms of any instruments securing this Note is not repaid, any monies received, at the option of the Holder, may first be applied to repay such advances, plus interest hereon, and the balance, if any, shall be applied as above. If a Default exists, the Holder may apply any payments received to Principal, interest, late charges or other amounts due from the Undersigned in such order as Holder, in its sole discretion shall determine. If any payment of Principal, interest, late charge or any other sum required to be made hereunder shall become due and payable on a day other than a Business Day, the due date of such payment shall be extended to the next succeeding Business Day with the same force and effect as if made on the scheduled payment or prepayment date, and without additional interest accruing thereon.

9. PREPAYMENT. This Note is subject to mandatory prepayment in whole or in part in the event the Tribe (as hereinafter defined) exercises its option under the Management Agreement (as hereinafter defined) to prepay all or a portion of the "Development Expenses," with interest thereon, due to the Undersigned pursuant to the Management Agreement. Subject to the conditions set forth in the Loan Agreement, the Principal Balance of this Note may be prepaid at the option of the Undersigned in whole or in part at any time. Any optional prepayment shall be made on fifteen (15) days advance written notice to the Holder and shall be made only on a Monthly Payment Date and shall be made in denominations of not less than $100,000 or provide for payment in full of the Principal Balance of this Note. No prepayment shall postpone the due dates or reduce the dollar amount of monthly installment payments.

10. SECURITY. The payment and performance of this Note are secured by the Loan Agreement and by an Escrow Agreement (the "Escrow Agreement") dated as of the date hereof between the Undersigned, the Lender and U.S. Bank Trust National Association, a

national banking association with offices in St. Paul, Minnesota, as escrow and paying agent (the "Escrow Agent"). Pursuant to the Loan Agreement, the Undersigned has pledged to the Lender a security interest in payments of management fees and loan repayment amounts (the "Pledged Revenues") required to be paid by St. Regis Mohawk Tribe, a federally recognized Indian tribe (the "Tribe") to the Undersigned pursuant to the Fourth Amended and Restated Management Agreement, dated November 7, 1997, and Addendum thereto (the "Management Agreement"), relating to the development and management by the Undersigned of the Tribe's gaming and related facilities; provided that such security interest is second and subordinate to the security interest in the Pledged Revenues granted to the Lender to secure payments with respect to the Borrower's Promissory Note, dated the date hereof, in the principal amount of $8,690,000 (the "Casino Note"). Pursuant to the Escrow Agreement, the Escrow Agent will receive the payment of all Pledged Revenues and, after paying to the holder of the Casino Note the monthly installment payment due with respect to the Casino Note, will pay to the Holder the monthly installment payment then due and pay the remaining portion of the Pledged Revenues to the Undersigned. This Note is executed pursuant to the terms and conditions of the Loan Agreement wherein the Undersigned is issuing this Note to the Lender and the Lender is lending the Principal sum of this Note to the Undersigned.

11. DEFAULT. If (i) a default be made in any payment when due in accordance with the terms and conditions of this Note, or (ii) an Event of Default (as defined therein) occurs under the Loan Agreement (any of the events described in clauses (i) and (ii) being herein singularly and collectively referred to as a "Default"), the entire Principal Balance together with accrued interest and servicing fees thereon and late charges, if any, shall become immediately due and payable at the option of the Holder.

12. TIME OF ESSENCE; NO WAIVER. Time is of the essence. No delay or omission on the part of the Holder in exercising any right hereunder shall operate as a waiver of such right of any other remedy under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on a future occasion. All rights and remedies of Lender under the terms of this Note, under the terms of the Loan Agreement and/or the Escrow Agreement, and under any statutes or rules of law shall be cumulative and may be exercised successively or concurrently. Any provision of this Note which may be unenforceable or invalid under any law shall be ineffective to the extent of such unenforceability or invalidity without affecting the enforceability or validity of any other provision hereof.

13. COSTS OF COLLECTION. In the event of any Default hereunder the Undersigned agrees to reimburse the Holder for the costs of collection, including arbitration and court costs (if any) and reasonable attorneys' fees (after Default but prior to arbitration, during arbitration, during enforcement of action with respect to an arbitration award and on appeal) incurred in collecting the indebtedness secured hereby, or in exercising or defending, or obtaining the right to exercise, the rights of Lender hereunder, under the Loan Agreement or under the Escrow Agreement, whether an arbitration proceeding or action to compel arbitration or enforce an arbitration award be brought or not, and in bankruptcy, insolvency, arrangement,

reorganization and other debtor-relief proceedings, in other court proceedings brought in accordance with the Loan Agreement, or otherwise in accordance with the Loan Agreement, and all costs and expenses incurred by Lender in protecting or preserving the property and interests which are subject to the Loan Agreement and the Escrow Agreement.

14. WAIVER OF PRESENTMENT, ETC. Except as may be otherwise required in this Note, the Escrow Agreement or the Loan Agreement, demand for payment, presentment for payment, protest, notice of protest, notice of non-payment, notice of dishonor, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of intent to foreclose on any collateral securing this Note, all other notices as to this Note, diligence in collection as to each and every payment due hereunder, and all other requirements necessary to charge or hold such person or entity to any obligation hereunder are waived. Consent is given to any release of all or any part of the security given for the payment hereof, any acceptance of additional security of any kind, and any release of, or resort to, any party liable for payment hereof.

15. SAVINGS CLAUSE. Notwithstanding anything to the contrary set forth in this instrument, if at any time until payment in full of all of the indebtedness due hereunder, the interest rate on such indebtedness exceeds the highest rate of interest permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto (the "Maximum Lawful Rate"), then in such event and so long as the Maximum Lawful Rate would be so exceeded, the interest rate shall be equal to the Maximum Lawful Rate; provided, however, that if at any time thereafter the interest rate is less than the Maximum Lawful Rate, the Undersigned shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by the Holder from the making of advances hereunder is equal to the total interest which the Holder would have received had the interest rate been (but for the operation of this paragraph) the interest rate payable since the initial funding of the Loan. Thereafter, the interest rate payable hereunder shall be the interest rate provided for in this instrument unless and until the interest rate so provided for again exceeds the Maximum Lawful Rate, in which event this paragraph shall again apply. In no event shall the total interest received by the Holder pursuant to the terms hereof exceed the amount which such Holder could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Lawful Rate. In the event that an arbitration panel appointed pursuant to the Loan Agreement or a court of competent jurisdiction, notwithstanding the provisions of this paragraph, shall make a final determination that the Holder has received interest in excess of the Maximum Lawful Rate, the Holder shall, to the extent permitted by applicable law, promptly apply such excess first to any interest due and not yet paid under this instrument, then to the Principal Balance due under this instrument, then to other unpaid indebtedness and thereafter shall refund any excess to Undersigned or as a court of competent jurisdiction may otherwise order.

16. USE OF PROCEEDS. All funds advanced under this Note shall be applied and are intended solely for commercial purposes and not for any personal, family or household purposes.

17. GOVERNING LAW. The interpretation and validity of this Note and all obligations evidenced hereby shall be governed by the substantive laws of the State of New York.

18. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. In the event of any default hereunder and in the event the Holder seeks enforcement of remedies to the Holder hereunder, the Holder may seek relief in, and the Undersigned consents to the jurisdiction of, the district courts of the State of Minnesota and all applicable appellate courts. The Undersigned hereby waives any rights to a jury trial for any damages or losses of whatever nature or kind directly or indirectly arising out of, or related to, this Note or any of the transactions contemplated in connection herewith.

Executed as of the date first above written.

PRESIDENT R.C. — ST. REGIS
MANAGEMENT COMPANY

By MASSENA MANAGEMENT, LLC,
general partner

By IVAN KAUFMAN
Its PRESIDENT

And MASSENA MANAGEMENT CORP.,
general partner

By IVAN KAUFMAN
Its PRESIDENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Escrow Agreement"), made as of the 24th day of February, 1999 by and between President R.C. — St. Regis Management Company ("Borrower"), a New York general partnership with its principal offices at 333 Earle Ovington Boulevard, Uniondale, New York 11553, Miller & Schroeder Investments Corporation ("Lender"), a Minnesota corporation with its principal offices at 220 South 6th Street, Minneapolis, Minnesota 55402 and U.S. Bank Trust National Association, a national banking association duly organized, existing and authorized to accept escrow deposits of the character herein set out under and by virtue of the laws of the United States of America, with its principal offices and domicile at 180 East Fifth Street, St. Paul, Minnesota 55101 ("Escrow Agent").

WITNESSETH:

WHEREAS, Borrower and Lender have entered into a Loan Agreement dated as of the date hereof (the "Loan Agreement-Casino"), pursuant to which Lender agrees, subject to the conditions provided therein, to lend to Borrower the principal sum of $8,690,000, and, to evidence its repayment obligations, Borrower has issued and delivered to Lender a Promissory Note dated the date hereof, in the principal amount of $8,690,000 (the "Casino Note"); and

WHEREAS, to secure its obligations under the Casino Note and the Casino Loan Agreement, pursuant to Section 3 of the Casino Loan Agreement, Borrower has pledged to Lender its interest in the management fees and loan repayment amounts (the "Pledged Revenues") required to be paid monthly by St. Regis Mohawk Tribe (the "Tribe"), a federally recognized Indian tribe, to Borrower pursuant to the terms of the Fourth Amended and Restated Management Agreement, dated November 7, 1997, and Addendum thereto (the "Management Agreement"), and has agreed to direct the Tribe to pay the Pledged Revenues due each month to the Escrow Agent for deposit in the Pledged Revenues Fund created hereunder; and

WHEREAS, Borrower and Lender have entered into a Loan Agreement dated as of the date hereof (the "Loan Agreement-Equipment"), pursuant to which Lender agrees, subject to the conditions provided therein, to lend to Borrower the principal sum of $3,492,000, and, to evidence its repayment obligations, Borrower has issued and delivered to Lender a Promissory Note dated the date hereof, in the principal amount of $3,492,000 (the "Equipment Note"); and

WHEREAS, to secure its obligations under the Equipment Note and the Equipment Loan Agreement, pursuant to Section 3 of the Equipment Loan Agreement, Borrower has pledged to Lender its interest in the Pledged Revenues, provided that such pledge is subordinate to the pledge of the Pledged Revenues for the payment of the Casino Note, and has agreed to direct the Tribe to pay the Pledged Revenues due each month to the Escrow Agent for deposit in the Pledged Revenues Fund created hereunder; and

WHEREAS, Borrower and Lender now desire to provide for the safekeeping and investment of the Pledged Revenues pending disbursement for payment of amounts due with

respect to the Casino Note and the Equipment Note and for the procedures in disbursing the Pledged Revenues.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, and intending to be legally bound, the parties hereto agree as follows:

1. Escrow Agent hereby acknowledges receipt of a true and correct copy of the Casino Note, the Equipment Note, the Casino Loan Agreement and the Equipment Loan Agreement and reference herein to or citation herein of any provision of said document shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if fully set forth herein.

2. There is hereby created and established with Escrow Agent a special and irrevocable escrow fund designated the "Pledged Revenues Fund" (the "Pledged Revenues Fund") to be held in the custody of Escrow Agent separate and apart from other funds of Borrower, Lender or Escrow Agent. The moneys and investments held by the Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of Lender, to the extent of Lender's interest therein, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Escrow Agreement. Lender, Borrower and the Escrow Agent intend that Lender have a first and prior security interest in the Pledged Revenues Fund, and such security interest is hereby granted by Borrower, to secure payment of all sums due to Lender under the Casino Note and the Casino Loan Agreement. Lender, Borrower and the Escrow Agent intend that Lender have a security interest in the Pledged Revenues Fund, second only to the security interest granted in the prior sentence to secure the payment of all sums due to Lender with respect to the Casino Note, and such security interest is hereby granted by Borrower, to secure payment of all sums due to Lender under the Equipment Note and the Equipment Loan Agreement. For such purpose, the Escrow Agent hereby agrees to act as agent for Lender in connection with the perfection of such security interest and agrees to note, or cause to be noted, on all books and records relating to the Pledged Revenues Fund, Lender's interest therein.

3. Borrower and Lender agree to authorize and direct the Tribe to pay to the Escrow Agent all Pledged Revenues coming due under the Management Agreement from and after the date of this Escrow Agreement and until such time as Borrower and Lender jointly give notice to the Tribe that all obligations of Borrower under the Casino Note, the Equipment Note, the Casino Loan Agreement and the Equipment Loan Agreement have been paid in full.

4. All Pledged Revenues received by the Escrow Agent shall be credited to the Pledged Revenues Fund, and, at the direction of Borrower, invested in a money market investment account until required to be distributed as hereinafter provided. If the Escrow Agent does not receive the payment of Pledged Revenues in any month prior to the date the Casino Monthly Service Charges and Equipment Monthly Service Charges (each as hereinafter defined) are due, or if the amount of Pledged Revenues received is less than the Casino Monthly Service Charges

and Equipment Monthly Service Charges then due, the Escrow Agent shall promptly give oral and written notice of this fact to Borrower and Lender.

5. Lender shall notify the Escrow Agent and Borrower prior to the tenth day of each calendar month, using a form of notice attached hereto as Exhibit A, of the amount next required to be paid to Lender as the principal, interest, servicing fees and/or other fees and charges due with respect to the Casino Note (the "Casino Monthly Service Charges") and with respect to the Equipment Note (the "Equipment Monthly Service Charges") in that month and the dates such payments are due.

6. The Escrow Agent shall pay to Lender first the Casino Monthly Service Charges, and then the Equipment Monthly Service Charges, on the date such amounts are due, or the next Business Day, by wire transfer. In the event the Escrow Agent has not yet received the payment of Pledged Revenues by the due date of the Casino Monthly Service Charges and the Equipment Monthly Service Charges, the Escrow Agent shall make the disbursement to Lender as soon as practicable after received. Following the payment to Lender of each month's Casino Monthly Service Charges and Equipment Monthly Service Charges, the Escrow Agent shall distribute all remaining Pledged Revenues each month to Borrower by wire transfer.

7. No assignment of Lender's interest in the Casino Note and the Casino Loan Agreement, or in the Equipment Note and the Equipment Loan Agreement, shall be effective as against the Escrow Agent unless and until the assignor shall have filed with the Escrow Agent a written notice thereof identifying the assignee and, if such assignment is of less than all of its interest in the Casino Note and the Casino Loan Agreement, or in the Equipment Note and the Equipment Loan Agreement, identifying the assignee's interest.

8. This Escrow Agreement may be modified or amended only with the written consent of all parties hereto.

9. Borrower agrees to pay Escrow Agent its fees and charges for serving as Escrow Agent hereunder and to pay and reimburse the Escrow Agent on demand for all out-of-pocket expenses (including in each case all reasonable fees and expenses of counsel) incurred or expended by the Escrow Agent in connection with the creation, perfection, satisfaction, foreclosure or enforcement of the security interests granted hereby and the preparation, administration and enforcement of this Escrow Agreement. For the purpose of securing the Escrow Agent's rights with respect to such fees and expenses, Borrower hereby grants to the Escrow Agent a lien on all Pledged Revenues held in the Pledged Revenues Fund prior to the liens granted by paragraph 2 hereof.

10. There shall at all times be an Escrow Agent hereunder which shall be a commercial bank or trust company organized and doing business under the laws of the United States of America or of any State, having a combined capital and surplus of at least $25,000,000. If at any time the Escrow Agent shall cease to be eligible in accordance with the provisions of this

Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

11. (a) No resignation or removal of the Escrow Agent and no appointment of a successor Escrow Agent pursuant to this paragraph shall become effective until the acceptance of appointment by the successor Escrow Agent under paragraph 12.

(b) The Escrow Agent may resign at any time by giving written notice thereof to the Borrower and Lender. If an instrument of acceptance by a successor Escrow Agent shall not have been delivered to the Escrow Agent within thirty days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent.

(c) The Escrow Agent may be removed at any time by an instrument in writing executed by Borrower and Lender and delivered to the Escrow Agent.

(d) If the Escrow Agent shall resign or be removed for any cause, Borrower shall promptly appoint a successor Escrow Agent, subject to the approval of Lender, and Borrower and Lender shall jointly give notice of such successor Escrow Agent to the Tribe.

12. Every successor Escrow Agent appointed hereunder shall execute, acknowledge, and deliver to the Tribe, Borrower and Lender and to the retiring Escrow Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Escrow Agent shall become effective and such successor Escrow Agent, without any further act, deed, or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Escrow Agent, but, on request of the Tribe or the successor Escrow Agent, such retiring Escrow Agent shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Escrow Agent all the rights, powers, and trusts of the retiring Escrow Agent, and shall duly assign, transfer, and deliver to such successor Escrow Agent all property and money held by such retiring Escrow Agent hereunder. Upon request of any such successor Escrow Agent, Borrower and Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers, and trusts.

13. Any corporation into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion, or consolidation to which the Escrow Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Escrow Agent, shall be the successor of the Escrow Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

14. Except as otherwise provided in paragraph 9, the Escrow Agent shall not set-off from Pledged Revenues any obligations or other amounts which may be payable to the Escrow Agent by Borrower, by Lender or by any other Person.

15. Any notice to any party to this Escrow Agreement shall be in writing and shall be sent by manual delivery, telegram, telex, facsimile transmission, overnight courier or United States mail (postage prepaid), addressed to such party at the address specified on the first page hereof, or at such other address as such party shall have specified to the other parties hereto in writing.

16. In the event of Escrow Agent's failure to account for any of the funds received by it, said funds shall be and remain property held in trust for the benefit of Lender for the purposes set forth in this Escrow Agreement, and if for any reason such funds cannot be identified, the assets of Escrow Agent shall be impressed with a trust for the amount thereof and Lender shall be entitled to a preferred claim upon such assets until such identification is made.

17. Escrow Agent's duties and responsibilities shall be limited to those expressly set forth in this Escrow Agreement, and Escrow Agent shall not be subject to, or obligated to recognize, any other agreement between Borrower and Lender or any other persons even though reference thereto may be made herein; provided, however, this Escrow Agreement may be amended at any time or times by an instrument in writing signed by all the parties hereto. Escrow Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the parties hereto or of any other person, except as expressly provided for herein and in performing any duties hereunder, Escrow Agent shall not be liable to any party for consequential damages (including, without limitation, lost profits), losses or expenses, except for gross negligence or willful misconduct on the part of the Escrow Agent.

18. Escrow Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment. Escrow Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document which in good faith it believes to be genuine.

19. If Escrow Agent believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection with the Pledged Revenues Fund or this Escrow Agreement, or in case Escrow Agent becomes involved in litigation on account of being escrow agent hereunder or on account of having received property subject hereto, then in either case, its costs, expenses and reasonable attorney's fees shall be paid by Borrower.

20. This Escrow Agreement shall terminate upon payment in full of all Borrower's obligations under the Casino Note, the Equipment Note, the Casino Loan Agreement and the Equipment Loan Agreement. Lender shall give written notice to the Escrow Agent at such time as all obligations of Borrower under the Casino Note, the Equipment Note, the Casino Loan Agreement and the Equipment Loan Agreement have been paid in full.

21. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of Borrower, Lender or Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or

agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

22. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

23. This Escrow Agreement shall be construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Agreement to be executed by their duly authorized officers and attested as of the date first above written.

PRESIDENT R.C. — ST. REGIS MANAGEMENT COMPANY

By MASSENA MANAGEMENT, LLC, general partner

By IVAN KAUFMAN
Its PRESIDENT

And MASSENA MANAGEMENT CORP., general partner

By IVAN KAUFMAN
Its PRESIDENT

MILLER & SCHROEDER INVESTMENT CORPORATION

By: [signature]
Title: Vice President
Date: 2/24/99

U.S. BANK TRUST NATIONAL ASSOCIATION,
ESCROW AGENT

By: [signature]
Print Name: L. Howard
Title: Vice President
Date: 2/24/99

EXHIBIT A

NOTICE OF MONTHLY SERVICE CHARGES

MONTHLY STATEMENT

Agreement Number
_____

Period Ending: _____
Total Amount Due: $_____

PLEASE REMIT PAYMENTS TO:

_____
_____
_____
_____

			PAYMENT AMOUNT			
DATE DUE	DATE PAID	DESCRIPTION	INTEREST	PRINCIPAL	TOTAL	AMOUNT DUE

TOTAL AMOUNT DUE

CURRENT PRINCIPAL BALANCE
INTEREST RATE
PERIOD ENDING

NOTICE AND ACKNOWLEDGMENT
OF PLEDGE

Recitals:

A. President R.C. - St. Regis Management Company ("PRC") and The St. Regis Mohawk Tribe, a federally recognized Indian tribe (the "Tribe") have entered into a Fourth Amended and Restated Management Agreement dated November 7, 1997, together with an amendment thereto dated February 11, 1999 (together, the "Agreement").

B. Under the Agreement, PRC has, among other things, agreed to pay all of the "Development Expenses", as defined in Section 6.1(B) of the Agreement, of the "Facility", as defined in Section 1.12 of the Agreement, and such Development Expenses, with interest thereon at the rate described in Section 6.1 (B), constitute a loan from PRC to the Tribe.

C. That loan is to be repaid by the Tribe to PRC in monthly payments consisting of a "Monthly Base Payment", as defined in Section 1.21 of the Agreement, and an additional payment of $500,000, as described in Section 8.10 (C) of the Agreement (the "Repayment Amounts"). As provided in Section 10.7 of the Agreement, the obligation of the Tribe to pay the Repayment Amounts shall survive any termination of the Agreement for cause until the total Development Expenses, with interest, have been repaid by the Tribe to PRC.

D. PRC and Miller & Schroeder Investments Corporation ("M&S") have entered into a loan agreement pursuant to which M&S will lend money (the "Loan") to PRC in order to finance a portion of the Development Expenses. As security for the repayment of the Loan, with interest, PRC has pledged to M&S the Repayment Amounts and all other amounts payable by the Tribe to PRC under the Agreement (the "Management Fees;" the Repayment Amounts and the Management Fees are collectively referred to herein as the "Agreement Payments").

E. In furtherance of that pledge, PRC desires that the Tribe make all Agreement Payments that are owed to PRC in the manner described in this Notice and Acknowledgment.

Acknowledgments and Agreements:

1. The Loan is an obligation of PRC, not the Tribe.

2. The Tribe acknowledges that PRC has pledged its interest in the Agreement Payments to M&S as security for the repayment of the Loan. Upon notice to the Tribe, jointly given by PRC and M&S, Tribe agrees that the Agreement Payments

will be paid by Tribe, or on its behalf, to an escrow account established with a state or national bank and designated by PRC and M&S (the "Escrow Account").

3. The Tribe acknowledges that the Development Expenses shall be repaid to PRC, with interest, at an annual rate equal to thirteen and one-half percent (13.5%) unless the total amount of the Development Expenses is repaid by the Tribe to PRC within one and one half years from the date the Tribal Gaming Operation is open for business to the public, in which event the annual rate will be equal to nine and one-half percent (9.5%), each as calculated pursuant to Section 6.1(B) of the Agreement.

4. The Tribe acknowledges that its obligation to pay the Repayment Amounts survives any termination of the Agreement as set forth in Section 10.7 of the Agreement and that M&S is lending money to PRC in reliance upon Tribe's continuing obligation to pay the Repayment Amounts. The Tribe agrees that it will pay all Repayment Amounts due to PRC to the Escrow Account without any set-off or deduction whatsoever notwithstanding any prior termination of the Agreement, or any defense, set-off, counterclaim or recoupment arising out of any claim against PRC or M&S, until all Development Expenses, with interest at the rate provided in Section 6.1(B) of the Agreement, have been fully repaid.

5. The Tribe further agrees that M&S has not assumed any duties under the Agreement or made any warranties whatsoever as to the Agreement. The Tribe agrees not to make any change to the Agreement affecting any section of the Agreement relating to the Repayment Amounts without the prior written consent of M&S.

6. The Tribe warrants that its covenants and agreements under Section 3 of the Agreement are true and correct on the date hereof.

7. The Tribe agrees that until the Loan is paid in full M&S shall be entitled to the benefits of and to enforce the agreements of the Tribe under the Agreement relating to the payment of the Repayment Amounts to the same extent as PRC.

8. The Tribe, PRC and M&S hereby covenant and agree that they each may sue or be sued to enforce or interpret the terms, covenants and conditions of this Notice and Acknowledgment or to enforce the obligations or rights of the parties hereto in accordance with the following terms and conditions:

   (A) Any action with regard to a controversy, disagreement or dispute between the Tribe, PRC or M&S arising under this Notice and Acknowledgment shall be brought before the appropriate United States District Court. In the event such federal court should determine that it lacks subject matter jurisdiction over any such action, such action shall be brought before the appropriate state court.

(B) The Tribe hereby expressly waives any right to proceed before any tribal court or authority of Tribe and further expressly waives any right which it may posses to require PRC or M&S to exhaust tribal remedies prior to bringing an action in federal court or state court as provided above.

(C) The Tribe hereby specifically and expressly waives its sovereign immunity from suit to the extent necessary to allow PRC or M&S to bring any action at law or in equity to enforce or interpret the terms and conditions of the Agreement including without limitation the right to obtain injunctive relief and/or monetary damages as determined by a court of competent jurisdiction. Nothing contained in this Notice and Acknowledgment shall be construed as waiving sovereign immunity in any suit for payment of damages from all of Tribe's reservation lands or funds held in trust for Tribe by the United States.

9. This Notice and Acknowledgment of Pledge shall constitute an agreement between the Tribe and M&S upon its execution and delivery to M&S.

Date: 12 Feb 99

PRESIDENT R.C.- ST. REGIS MANAGEMENT COMPANY

By: _____
Name: Ivan Kaufman
Title: President

THE ST. REGIS MOHAWK TRIBE

By: _____
Name: Edward D. Smoke
Title: Tribal Chief Executive

MILLER & SCHROEDER INVESTMENTS CORPORATION

By: _____
Name: KENNETH R LARSEN
Title: Vice President

PST0128

NOTICE OF ESCROW AGENT

Pursuant to the Notice and Assignment of Pledge, dated as of 2/24, 1999 (the "Notice of Pledge"), between President R.C.--St. Regis Management Company ("PRC"), Miller & Schroeder Investments Corporation ("M&S"), and The St. Regis Mohawk Tribe, a federally recognized Indian tribe (the "Tribe"), including paragraph 2 thereof, M&S and PRC hereby direct the Tribe to pay all Agreement Payments (as defined in the Notice of Pledge) to U.S. Bank Trust National Association, as escrow agent, with an address of 180 East Fifth Street, St. Paul, Minnesota 55101, by wire transfer according to the following instructions: ABA: 091000022 US Bank, BBK: U.S. Bank Trust N.A., A/C: 180121167365, BNF: Corporate Trust Services, A/C: 47300017, OBI: ATTN: [Debt Management - 33372840].

DATE: 2/24/99

PRESIDENT R.C.--ST. REGIS MANAGEMENT COMPANY

BY: _____
NAME: Ivan Kaufman
TITLE: Chairman, Massena Management, LLC
and Chairman, Massena Management, Corp.

MILLER & SCHROEDER INVESTMENTS CORPORATION

BY: _____
NAME: Kenneth R. Larsen
TITLE: Vice President

MEMORANDUM

DATE: February 23, 1999

TO: All St. Regis I & II Participants

FROM: Todd Hendrickson

RE: $8,690,000 Senior Lien Construction Financing to the President R.C.—St. Regis Management Company for the St. Regis Mohawk Akwesasne Casino ("Senior Lien") $3,492,000 Subordinate Senior Lien Furniture, Fixtures and Equipment Financing to the President R.C. –St. Regis Management Company for the St. Regis Mohawk Akwesasne Casino ("Subordinate Senior Lien")

CC: Steve Erickson
Mary Jo Brenden

1. In regard to the above referenced, the Borrower submitted a request for approval of the increased Development Expenses of the St. Regis Mohawk Akwesasne Casino ("Casino") as described in the Management Contract, to the National Indian Gaming Commission ("NIGC") to approve a cap increase to the Fourth Amended and Restated Management Contract ("Management Contract") from $20,000,000 to $28,000,000. NIGC has notified the Borrower that it may take as long as 60 days to review and approve the cap increase.

2. As it exists now, the Fourth Amended and Restated Management Contract which was approved by the NIGC on December 27, 1997, has a Development Expense cap of $20,000,000.

3. The Loans have a first priority security interest in the revenues as follows:

   A. The Borrower's 25% share of the Gaming Net Revenues as defined by the Contract (Gross Revenues less prizes, pay-outs and operating expenses) for compensation as manager of the Casino ("Management Fees"); and
   B. Repayment of the Development Expenses according to the following schedule:
      1) monthly principal and interest payments from the first $12,000,000 advanced for Development Expenses amortized for 5 years at 13.5% fixed, plus
      2) an additional monthly payment of $500,000 for the remaining $8,000,000 of the Development Expense (as approved and capped at $20 million).

4. The Borrower is confident that the NIGC will approve the cap increase, however, the Borrower would like to keep the Casino on schedule for its grand opening on April 10, 1999. Therefore, in light of the time frame required by NIGC to complete the review, the Borrower has requested that Miller & Schroeder close and fund the Loans without the NIGC approval of the cap increase as the Casino is near completion. As the Loans are first to be repaid from the revenues as described above, Miller & Schroeder is recommending the participants close and fund as scheduled.

5. The amortization period for the Subordinate Senior Lien will be extended from a 33-month amortization to a 36-month amortization with the final maturity of May 20, 2002.

6. The Tribe and the Borrower have executed a Notice and Acknowledgment of Pledge ("Notice"), in which the Tribe acknowledges the pledge by the Borrower of the security as

described above, to Miller & Schroeder. A draft of the Notice has been submitted to the NIGC for review and the final executed Notice by Miller & Schroeder will be submitted by the Tribe after closing. A positive response from NIGC is expected to be received in due course.

Approve ✓ LAKE Country State Bank

Disapprove _____

Please fax your response back to Miller & Schroeder Financial, Inc. to the attention of Todd Hendrickson at 612-376-1465. Thank You

Sincerely,

Todd Hendrickson

Todd Hendrickson
Senior Vice President

PARTICIPATION AGREEMENT

BETWEEN

MILLER & SCHROEDER INVESTMENTS CORPORATION

AND

COMMUNITY NATIONAL BANK

FOR A PARTICIPATION INTEREST

IN THE

$8,690,000 LOAN

TO

PRESIDENT R.C. - ST. REGIS MANAGEMENT COMPANY

Akwesasne Mohawk Casino
St. Regis Mohawk Reservation
Hogansburg, New York

(St. Regis I)

THIS PARTICIPATION AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into as of the 1st day of March, 1999 between COMMUNITY NATIONAL BANK (the "Participant") and MILLER & SCHROEDER INVESTMENTS CORPORATION, a Minnesota corporation (the "Lender").

PRELIMINARY RECITALS

WHEREAS, the Lender anticipates funding a loan to President R.C. - St. Regis Management Company (the "Borrower") in the amount of $8,690,000 dated February 24, 1999 (the "Loan").

WHEREAS, the Loan is evidenced by a Promissory Note to the Lender executed and delivered by Borrower in the aggregate amount of the Loan.

WHEREAS, the Participant is desirous of purchasing from Lender a Participation Interest in the Loan.

WHEREAS, Lender is willing to sell a Participation Interest in the Note to the Participant and may retain and/or sell to others the remaining Participation Interest in the Loan.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and provisions herein contained, the parties hereto do hereby covenant and agree as follows:

1. DEFINITIONS. For purposes of this Agreement:

"**Advances**" means the from time to time principal of the Loan disbursed.

"**Assignment of Payments**" means the Collateral Assignment of Contract Rights from the Borrower to Lender.

"**Borrower**" means President R.C. - St. Regis Management Company, a New York general partnership.

"**Collateral**" means the Loan Documents, the Property and interests in the Property now or hereafter securing the Loan and any and all security interests, security titles, liens, claims, endorsements and guaranties of whatever nature now or hereafter securing the Loan.

"**Collections**" means all monies or other Property hereafter received by Lender on account of the Loan including, without limitation, principal, interest, prepayment premiums, late charges, and all other sums realized from:

(i) any Collateral;
(ii) any Obligor;
(iii) payments under the Assignment of Payments;
(iv) the exercise of any remedies or foreclosure by Lender of any liens, security interests, claims or rights of setoff with respect to the collateral or any deposit balance or other Property of any Obligor; and
(v) Enforcement Procedures.

"**Contract**" means the Fourth Amended and Restated Management Agreement between the Borrower and the St. Regis Mohawk Tribe.

"**Enforcement Procedures**" has the meaning ascribed thereto in Section 6.2.

"**Equipment**" means the items of Equipment described in the Security Agreement which secures the Loan.

"**Event of Default**" has the meaning ascribed thereto in Subsection 6.2.1.

"**Extraordinary Expenses**" means all costs, expenses (including, without limitation, court costs, attorneys' fees and legal expenses, including costs, fees and expenses of appeal), taxes, assessments, insurance premiums, any charges required by the Loan Documents to be paid, or expenses which, in the good faith opinion of Lender, are necessary or desirable to protect or preserve any Collateral, and any and all other out-of-pocket expenses which are incurred by Lender, including the fees and costs of any professionals hired by Lender (and not promptly paid or reimbursed by Borrower) at any time or from time to time hereafter, in connection with:

(i) the collection or enforcement of the Loan;
(ii) the preservation of the Collateral;
(iii) the collection or enforcement of Borrower's liabilities or the liabilities of any Obligor;
(iv) the sale, disposition or other realization upon or the recovery of possession of the Collateral;
(v) any Enforcement Procedures; or

(vi) the filing and prosecution of a complaint with respect to any of the above matters or the defense of any claim, actual or threatened, by Borrower, a receiver or trustee in bankruptcy for, or other representative of, Borrower, any Obligor or third party, for, on account of, or with respect to the Loan or the Loan Documents, whether to recover damages for business interference, for liabilities or debts of Borrower (including, without limitation, taxes), for alleged preferences or fraudulent conveyances or transfers received or alleged to have been received from Borrower or any such Obligor as a result of the Loan or in connection with any Collections, or otherwise, and shall include the amount of any recovery from Lender in such litigation or proceeding, whether by settlement or pursuant to a judgment.

"Facility" means the Akwesasne Mohawk Casino located on the St. Regis Mohawk Reservation in Hogansburg, New York.

"Guarantor" means any person or entity who has executed any instrument agreeing to act as a security or guarantor of the Loan or any portion thereof.

"Institutional Investor" means any:

a) insurance company (as defined in Section 2(13) of the Securities Act of 1933); or

b) any employee benefit plan within the meaning of the Title I of the Employee Retirement Income Security Act of 1974 which meets the following:

(i) has the investment decision made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser; or

(ii) the employee benefit plan has total assets in excess of $5,000,000.

c) an entity which has total assets in excess of $5,000,000, was not formed for the specific purpose of investing in the Loan, and is one or more of the following:

(i) a corporation; or
(ii) a Massachusetts or similar business trust; or
(iii) a partnership.

d) a trust with total assets exceeding $5,000,000 which was not formed for the specific purpose of acquiring a participation in the Loan and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the investment in the Loan.

e) an entity in which all the equity owners are accredited investors (within the meaning of Regulation D of Securities Act of 1933).

f) any bank (as defined in Section 3(a)(2) of the Securities Act of 1933) or savings and loan association or institution (as defined in Section 3(a)(5)(A) of the Securities Act of 1933).

"**Lender**" means Miller & Schroeder Investments Corporation, a Minnesota corporation.

"**Loan**" means the Loan made by Lender to Borrower subject to and in accordance with the terms of the Note in the amount of $8,690,000.

"**Loan Documents**" means all of the documents evidencing and securing the Loan including, without limitation, those documents referred to in Exhibit "A" attached hereto and incorporated herein by reference.

"**Majority Interest**" means those Participants who in the aggregate hold at least 66% of the total principal of the Loan evidenced by Participation Interests.

"**Maximum Principal Amount of Participation**" means the amount purchased for each Participant pursuant to the Participation Agreement for each Participant.

"**Note**" means the Promissory Note of the Borrower to Lender dated February 24, 1999, in the amount of $8,690,000.

"**Note Rate**" means the rate of interest, from time to time, charged on the Note and as more fully set forth therein.

"**Obligor**" means any person or entity who is or may in the future become obligated to Lender with respect to the Loan including, without limitation, Borrower and any Guarantor.

"**Other Participant(s)**" means any other person or entity, whether one or more, who holds a Participation Interest, including Lender if it retains a Participation Interest in the Loan.

"**Participant**" means the party identified in the preamble to this Agreement as "Participant".

"**Participants**" means the Participant, the Other Participants and the Lender, if it retains a Participation Interest in the Loan.

"**Participation Interest(s)**" means the individual interests of the Participants in the Loan.

"**Participation Percentage**" means the percentage amount that the Maximum Principal Amount of Participation of Participant in the Loan bears to the entire original principal amount of the Loan expressed as a percentage.

"**Participation Rate**" means the per annum interest rate to be payable to Participant on its Participation in the Loan as identified in Exhibit "B".

"**Payments**" means all revenues and payments of money paid to Borrower under the Contract.

"**Proceeds**" means amounts payable pursuant to any insurance policy insuring against loss or damage to the Property or the income therefrom, and the payments pursuant to any performance, payment, lien or material bond if issued in favor of the Lender as obligee.

"**Property**" means any collateral or security which secures the Loan as described in the Loan Documents.

"**Servicing Fee**" means the fee paid by the Borrower to the Lender for administering the Loan in accordance with this Agreement.

2. SALE OF PARTICIPATION.

2.1 **Sale and Purchase**. Lender hereby sells and Participant hereby purchases an undivided interest in and to the Loan and in the Collateral and in the Collections in an amount equal to Participant's Maximum Principal Amount of Participation.

2.2 **Relationship of Parties**. The relationship between Lender and Participant is and shall be that of a seller and purchaser of a property interest (i.e., an outright, absolute partial assignment of an undivided interest in and to the Loan, in the Collateral and in the Collections) and not a creditor-debtor relationship. The Participant hereby approves of and authorizes the Lender to be named as the nominal payee of the Note and nominal beneficiary of each Guaranty and the nominal secured party under the Loan Documents, and, subject to the provisions of this Agreement, to generally act as agent for all the Participants in the holding and disposition of the Collateral. The Lender agrees that the Lender holds the security interests and other interests granted by the Note and the Loan Documents not in its individual capacity but rather as agent for the Participants in accordance with this Agreement.

2.3 **Pari Passu Interests**. The respective interests of Lender, Participant and all Other Participants in and to the Loan, in the Collateral and in the Collections shall be pari passu and no party shall have any priority over the other. The Participant agrees that if it shall, by exercising any right of setoff or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to the Loan, the Participant shall pay the same over to the Lender, for distribution by the Lender among the Participants as Collections in accordance with this Agreement.

2.4 **Disgorgement**. If the Lender is required to refund to the Borrower or any Guarantor or a trustee in bankruptcy or any of them (on account of a preference or otherwise) any amount in connection with this Agreement, then the Participant shall pay to the Lender its Participation Percentage of the refund.

2.5 **Certificate of Participation**. Lender shall execute and deliver to Participant a Certificate of Participation in the form attached hereto as Exhibit "C" and incorporated herein by reference (with appropriate insertions) evidencing Participant's share in the Loan.

3. LOAN DOCUMENTS.

3.1 **Participant's Representations**. Participant acknowledges and agrees that Lender shall hold the Loan Documents and other Collateral in its name for the benefit of the Lender, the Participant and the Other Participant(s). Participant has received and made a complete examination of copies of all Loan Documents it requires to be examined and approves of the form and content of the same. Participant acknowledges that Participant has been provided with or granted access to all of the financial and other information that Participant has requested or believes to be necessary to enable Participant to make an independent and informed judgment with respect to the Collateral, Borrower and any Obligor and their credit and the desirability of purchasing an undivided interest in the Loan. Participant has, without reliance on Lender and based upon such documents and

information as the Participant has deemed appropriate, made its own credit analysis and decision to purchase its participation interest in the Loan. Participant is participating with Lender based upon Participant's own independent examination and evaluation of the Loan transaction and the information furnished with respect to Borrower and without any representations or warranties from Lender as to the Borrower's financial suitability, the appropriateness of the investment and the value and security of the Collateral. The Participant's execution and delivery of this Agreement and its purchase of an undivided interest in the Loan does not constitute a violation of any agreement, law, statute, regulation, decree or decision (including any legal lending limits) which is binding on it. **PARTICIPANT REPRESENTS THAT IT IS AN INSTITUTIONAL INVESTOR. FURTHER, PARTICIPANT ACKNOWLEDGES THAT LENDER'S ASSETS AND CREDIT ARE NOT PLEDGED TO REPAYMENT OF THE LOAN. PARTICIPANT ACKNOWLEDGES THAT LENDER MAKES NO WARRANTY OR REPRESENTATION AND SHALL NOT BE RESPONSIBLE FOR ANY STATEMENT, WARRANTY OR REPRESENTATION MADE IN CONNECTION WITH THE COLLATERAL OR ANY DOCUMENT IN CONNECTION WITH THE LOAN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PARTICIPANT ACKNOWLEDGES THAT LENDER HAS MADE NO GUARANTY OF REPAYMENT, IT BEING UNDERSTOOD PARTICIPANT SHALL LOOK ONLY TO BORROWER, ANY OBLIGOR AND TO THE COLLATERAL FOR REPAYMENT OF THE LOAN.**

PARTICIPANT ACKNOWLEDGES THAT THE STATE OF NEW YORK RACING AND WAGERING BOARD MAY REQUIRE CERTAIN INFORMATION ABOUT THE PARTICIPANT IN CONNECTION WITH THE LOAN. PARTICIPANT AGREES TO COOPERATE WITH THE STATE OF NEW YORK RACING AND WAGERING BOARD.

3.2 Transfer/Pledge of Loan Documents. The Loan Documents shall not be pledged, transferred or assigned without the unanimous consent of all of the Participant(s). However, nothing herein shall prohibit the further sale by Lender of participations in its remaining interest in the Loan or sale of any participation interest it repurchases pursuant to Paragraph 7.3, and nothing shall prohibit the pledge or assignment by Lender of its remaining interest in the Loan as security for a loan made to Lender pursuant to the rights reserved in Paragraph 7.4.

3.3 Participant's Consent.

3.3.1 Consent of Majority Interest Required. Unless otherwise provided in this Agreement, the Lender may only take action with respect to the Loan Documents and the Collateral with the consent of a Majority Interest.

3.3.2 No Consent Required. Notwithstanding the provisions of the foregoing paragraph 3.3.1, and subject to the provisions of Article 6, Participant agrees that Lender shall be entitled to deal with the Loan and take such actions as the Lender would take for a similar loan in its own account in the ordinary course of business (including a substitution of collateral of a type and value acceptable to Lender) and, subject to the provisions of Article 6 [Event of Default], Lender shall on behalf of itself and the Participant(s) and Other Participants(s) make all decisions and take such action required to be made or taken by the holder of the Note under the terms of the Loan Documents.

3.3.3 Corrective Actions. The Lender may, at any time without the consent of Participant(s), subject to the conditions and restrictions set forth in the Loan Documents, enter into supplements of the Loan Documents for any one or more of the following purposes:

(i) to correct or amplify the description of any property subject to the lien of the Loan Documents;

(ii) to grant to the Lender one or more additional properties as security for the Loan provided; or

(iii) to cure any ambiguity, or to cure, correct or supplement any defective or inconsistent provision contained therein.

3.3.4 Unanimous Consent Required. Except as provided for in Article 6 (upon the occurrence of an Event of Default), unanimous consent shall be required from all Participants to deprive any Participant of the benefit of the lien of the Loan Documents upon any of the property for the security of the Loan, including, but not limited to, (i) required repayment of the Loan; (ii) optional prepayment; (iii) voting percentages; and (iv) interest rate.

4. ADMINISTRATION

4.1 Administration. Lender shall administer the Loan for the benefit of the Participant and any Other Participant(s) in accordance with the customary policies and procedures under which it administers loans for its own account.

4.2 Disbursement of Loan. Participant hereby authorizes Lender to make Advances of the proceeds of the Loan in accordance with the Loan Documents and Participant acknowledges and Lender agrees that the proceeds of the Loan shall be disbursed by Lender to Borrower pursuant to the Loan Documents. Upon request, Lender shall provide Participant with copies of all applications for payment submitted by Borrower. Each Advance shall be disbursed ratably for the account of all Participants in their respective Participation Percentage.

4.3 Participation in Loan Disbursements. As and when an Advance is required to be made under the Loan Documents, Participant shall on or before 10:00 a.m. Central time on the day of a requested Advance deposit in Lender's settlement account at Norwest Bank Minnesota, National Association, in federal funds or other funds current in Minneapolis, Minnesota, Participant's Participation Percentage of such Advance. Lender shall give Participant written or telephonic notice of Participant's Participation Percentage of any proposed disbursement of an Advance at least three (3) business days in advance of each such disbursement. In the event Lender shall have made previous disbursements of the Loan to Borrower, Participant shall upon request by Lender within three (3) business days thereafter deposit with Lender in the foregoing manner Participant's Participation Percentage of the total amount of such previous disbursements. In the event Participant fails to furnish to Lender at the time called for an Advance with immediately available funds equal to its Participant Percentage of the amount of such Advance, Lender shall have the right but, between the Participant and Lender, not the obligation, to advance such funds on behalf of Participant and any funds so advanced shall constitute a loan to Participant bearing interest at four percent (4%) in excess of the Note Rate from the date advanced by Lender and shall be due and payable by Participant to Lender upon demand. In no event shall Lender have any obligation to advance any such funds on behalf of Participant at any time hereunder.

4.4 Collections and Servicing of Loan. Lender shall collect from Borrower or any Obligor any and all Collections, all in accordance with Lender's usual practices and procedures under which it administers loans for its own account and shall, subject to Article 6 (occurrence of an Event of Default), exercise for the benefit of itself, Participant and all Other Participant(s) all rights and interests (including Participant's rights and interests) with respect to the Loan, the Loan Documents and other Collateral. Lender shall hold the pro rata portion of all Collections received by Lender for Participant and Lender shall promptly account for and pay to Participant, by check to Participant,

Participant's portion of any and all such Collections in such funds current in Minneapolis, Minnesota. Until remitted to the Participant, the Lender will hold Participant's share of all Collections as agent for the Participant. Participant's portion of any Collections shall be that amount equal to its Participation Percentage thereof; provided, however, that with respect to portions of Collections comprising interest, Participant shall be entitled to receive interest at the Participation Rate on amounts advanced by Participant.

4.5 Books and Records. Lender shall maintain books and records reflecting all financial transactions of Lender relating directly to the Loan which books and records shall be available to the Participant during Lender's office hours. Lender agrees to provide access, upon request by the Participant, to all loan documentation in its possession or control to the Participant, the Office of Thrift Supervision, its District Director, or the examinations and supervision staff. Lender shall not be required to segregate from its own funds Participant's share of Collections actually received, or to maintain separate, internal records with respect to Participant's share of the Loan (other than the Certificates of Participation).

4.6 Expenses. All normal costs and expenses associated with Lender's overhead in collecting the Loan shall be paid for by Lender. Upon demand by Lender, however, Participant shall pay to Lender in proportion to Participant's Participation Percentage of the Loan its portion of all Extraordinary Expenses incurred by Lender in connection with the Loan and not promptly paid or reimbursed by Borrower.

4.7 Insurance. All insurance policies for which a lender's loss payee endorsement is required shall name the Lender as loss payee. Lender shall adjust, compromise, or settle any insurance policies and in the exercise of its sole discretion shall take any and all actions the Lender may deem appropriate or advisable in connection with the same. Lender shall hold the proceeds received on behalf of Participant, any Other Participant(s) and shall apply the same in accordance with the provisions of the Loan Documents. If the Loan Documents provide for application at the discretion of the holder thereof, or if Lender is requested by Borrower to apply the proceeds inconsistent with the provisions of the Loan Documents, then Lender shall notify the Participant, any Other Participant(s) of the same and the directions of the Majority Interests shall govern such application; provided, however, in the event that the Majority Interests are unable to agree upon any such application within such period as the circumstances may in Lender's judgment reasonably require, Lender shall have the sole right and authority to decide as to any such application and its good faith decision shall be binding upon Participant with the same force and effect as if Participant had concurred therein. Any proceeds received by Lender which are not required by the Loan Documents to be paid to Borrower or a third party shall be paid to Participant as Collections in proportion to Participant's Participation negotiated.

4.8 Litigation Regarding the Loan. If Lender is of the opinion that the services of an attorney should be retained for the protection of the interest of Lender, Participant, any Other Participant(s), Lender shall select and retain an attorney to represent Lender, Participant, any other Participant(s). Participant, any Other Participant(s) shall pay on demand its portion of the fees and expenses of such attorney in proportion to its Participation Percentage of the Loan.

4.9 Servicing Fee. The Borrower shall pay to Lender a Servicing Fee as defined in the Loan Documents, as compensation to the Lender for acting as principal hereunder and administering the Loan.

4.10 Commitment Fees. Participant shall have no claim to any commitment fee, origination fee, brokerage fee, facility fee or other similar fee paid to Lender for the origination of the Loan nor any fee negotiated for the servicing of the Loan.

4.11 **Documentation Fee**. Participant shall be paid a documentation fee by the Lender of 1% of the Maximum Principal Amount of Participation.

4.12 **Lender's Right to Offset**. Notwithstanding anything to the contrary in this Agreement, Lender may, in its sole discretion, with or without notice to the Participant, offset from Participant's share of Collections: (1) any Extraordinary Expenses incurred in connection with the Loan; and (2) any legal fees and expenses incurred in connection with the litigation of the Loan.

5. LENDER'S DUTY OF CARE AND RESPONSIBILITY TO PARTICIPANT.

5.1 **Risk of Nonpayment**. Participant accepts the full risk of nonpayment by Borrower and any other Obligor of the Loan and of Participant's interest in the Loan and agrees that Lender shall not be responsible for nor warrants or represents the payment, performance or observance by Borrower or any other Obligor of any of the terms, covenants or conditions of the Loan Documents.

5.2 **No Warranties**. Participant specifically acknowledges that Lender has made no warranty or representation, express or implied, to Participant with respect to the solvency, condition (financial or other) or future condition (financial or other) of Borrower, any Obligor, Lender, or the Collateral. Participant also acknowledges that Lender makes no warranty or representation as to and shall not be responsible for the due execution, legality, validity, enforceability, genuineness, sufficiency or collectibility of the Collateral or any document relative thereto. Lender shall not be responsible for the performance or observance of any of the terms, covenants or conditions of the Loan Documents and shall not have any duty to inspect the property (including the books and records) of any Borrower or Guarantor.

5.3 **Duty of Care**. In its capacity under this Agreement, Lender shall only be accountable for the management and administration of the Loan in accordance with the customary policies and procedures under which it administers loans for its own account and shall not be liable for any negligence or default save the direct acts or omissions of itself and its employees and then only arising out of gross negligence or willful misconduct. In the exercise of any of its duties or powers or in its administration of the Loan, the Lender may act on the advice of or information obtained from any accountant, attorney, appraiser, evaluator, surveyor, engineer or architect or other expert and shall not be responsible for any loss occasioned by acting thereon and shall be entitled to take legal or other advice and employ such assistance as may be necessary to the proper discharge of its duties and to pay proper and reasonable compensation for all such legal and other advice or assistance which compensation shall be an "Extraordinary Expense" and, upon demand of Lender, shall be paid by the Participant in its Participation Percentage. The Lender shall not be responsible for any negligence or misconduct on the part of any accountant, attorney, appraiser, evaluator, surveyor, engineer, architect or other expert or be bound to supervise the proceedings of any such appointee provided that Lender shall use reasonable care in the selection of such person or firm. Notwithstanding anything to the contrary contained in the Agreement or in any law applicable generally to transactions of the type evidenced by this Agreement, Lender may act upon any written or oral notice, or any consent, certificate, cable, telex or other instrument or writing believed by Lender to be to be genuine. Lender shall not be liable to Participant under any circumstances directly or indirectly, for any action taken or omitted to be taken by it in good faith, nor shall the Lender be liable or responsible for the consequences of any oversight or errors of business judgment made in good faith in the exercise of its reasonable judgment. The Lender shall not be liable with respect to any action taken or omitted to be taken by Lender in accordance with any written instruction furnished to the Lender by the Majority Interest of Participant(s).

6. DEFAULT AND ENFORCEMENT OF REMEDIES.

6.1 Notice of Defaults. Lender will use its best efforts to give Participant notice of the occurrence of any material and significant default or event of default under any of the Loan Documents of which Lender shall have actual knowledge, but Lender's failure to give Participant any such notice shall not result in any liability on Lender's part to Participant. Lender shall deliver to Participant a copy of any notice of default sent by Lender to Borrower under the Loan Documents.

6.2 Enforcement of Remedies. Lender shall, on behalf of itself and all Participants, enforce any remedies under the Loan Documents (herein generally "Enforcement Procedures"), and in furtherance thereof may select counsel and other professionals of its choice to assist Lender on the following terms and conditions:

6.2.1. In the event of the occurrence of any material and significant default or event of default under any of the Loan Documents of which Lender shall have actual knowledge (a default or event of default under this Subsection 6.2.1 being hereinafter referred to as an "Event of Default"), Lender shall notify each Participant of the Event of Default prior to taking any action:

(i) to accelerate the maturity of the indebtedness evidenced by the Note,

(ii) to exercise any other enforcement rights under the Loan Documents,

(iii) to grant or make extensions, renewals, modifications, waivers, forbearance and indulgences to or with Borrower or any Obligor under the Loan Documents, or

(iv) to effect a restructuring of the Loan.

6.2.2 After the occurrence of an Event of Default and after providing such notice as required by 6.2.1, if a Majority Interest of the Participant(s) shall agree on a course of action and notify the Lender of the same, the Lender shall take the action requested by the Majority Interest of the Participant(s) or, if a Majority Interest of the Participants agree no Enforcement Procedures shall be taken, then to refrain from exercising any Enforcement Procedures. If a Majority Interest of the Participant(s) are unable to agree upon any course of action within such period as the circumstances may require, but in no event to exceed ten (10) days after notification, Lender shall have the sole and exclusive right and authority (but not the obligation) to effect Enforcement Procedures on such terms and conditions as Lender in the exercise of its sole discretion shall deem advisable and any such action made or taken by Lender shall be binding upon the Participant with the same force and effect as if Participant had concurred therein. The Lender shall not be liable with respect to any action taken or omitted to be taken by Lender in accordance with any written instruction furnished to the Lender by the Majority Interest of the Participants.

6.2.3. In the event of the occurrence of an Event of Default which in the opinion of Lender requires immediate action, Lender shall make a diligent effort to obtain approval by telephone of Majority Interest of Participant(s), but if such Majority Interest of Participant(s) cannot be so contacted or such approval is not immediately forthcoming, Lender shall nevertheless have the sole and exclusive right to take such action as in Lender's judgment is necessary or appropriate in such circumstances.

6.2.4 In the event that Enforcement Procedures are brought and prosecuted by Lender, such proceedings shall be instituted by Lender and counsel of its choice and Lender shall keep Participant informed to the extent of Lender's knowledge as to the progress of the proceedings. Lender may accept reinstatement or redemption of the Loan without the prior consent of Participant, and Participant acknowledges that the Loan may be reinstated or redeemed by Borrower without the consent of Participant.

6.2.5 Under each circumstance where Lender advances additional funds out of pocket and if, within ten (10) days thereafter, the Borrower has not repaid the funds advanced by the Lender then, notwithstanding anything to the contrary contained herein, the Lender may declare such failure an Event of Default by the Borrower and may take action to effect Enforcement Procedures and avail itself of the rights available under the Loan Documents to collect and enforce payment and performance of the same regardless of whether a Majority Interest has consented to the same and Participant agrees not to object to such action on the part of the Lender.

6.2.6 Nothing herein shall be construed as requiring the Lender to advance its own funds (other than may be required of it as a Participant in the Loan) to prevent or cure an Event of Default or to effectuate an Enforcement Procedure.

6.2.7 Except for action expressly required to be taken by Lender hereunder, Lender shall be entitled to refrain from taking any action hereunder unless it shall be indemnified by all Participants to its satisfaction from any and all liability and expense it may incur by reason of taking such action.

6.3 **Collection and Related Expenses**. All expenses of collection, including without limitation, attorney's fees, publication expenses, foreclosure expenses, transfer fees or taxes, and all expenses incurred by Lender in connection with an Enforcement Procedure are Extraordinary Expenses, and Participant shall pay, on demand, its portion thereof in accordance with its Participation Percentage of the Loan.

6.4 **Collection Rights of Lender**. In addition to Lender's other rights under Section 6 with respect to the Collateral (including proceeds), Lender may at any time notify any person obligated to pay any amount due on the Collateral (a "Collateral Obligor"), to pay any amount due under the Collateral, that such right to receive payment has been assigned or transferred to Lender and such payments shall be paid directly to Lender. At any time after Lender gives such notice, Lender may (but need not) in its name demand, sue, form, collect or receive any money or property at any time payable or receivable on account of the Collateral, or grant any extension to make any compromise or settlement with or otherwise agree to waive, notify, amend or change the obligations (including collateral obligations) of any Collateral Obligor. As soon as the Lender acquires the Collateral, it will immediately transfer the Collateral to all Participants as tenants-in-common and Participant agrees to accept delivery of the Collateral.

6.5 Ownership. In the event that the Participants shall become the owners of the Property through an Enforcement Procedure, the Participants shall own (in their Participation Percentages on the Loan) the Property as tenants-in-common and not as joint tenants. All charges, expenses or expenditures on the part of Lender as are incurred (collectively, "Charges") shall be "Extraordinary Expenses" and each Participant shall bear its portion incurred in accordance with its Participation Percentage in the Loan and made payment of the same on demand after Lender requests payment of the same. Any income collected from the Property (after deducting therefrom the Charges incurred) shall be Collections and the respective portion thereof shall be paid to each Participant in accordance with its Participation Percentage in the Loan.

7. MISCELLANEOUS.

7.1 Notices. All notices and other communications shall be given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or delivery by reputable private carrier such as Federal Express, Airborne, DHL or similar private courier service, and addressed as provided in Exhibit "B" attached hereto. Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time and at any time during the term of this Agreement to change its address and shall have the right to specify as its address any other address within the United States of America.

7.2 Purchase For Its Own Account. Participant represents and warrants to Lender and any Other Participant that subject to the requirement that the assets of a Participant must at times be within its control, the Participant is acquiring the Participation Interest in the Loan for its own account for investment with the present intention to hold the same for investment and not for resale.

7.3 Restrictions on Assignment or Sale. Participant may sell its Participation Interest in the Loan only on the following terms and conditions:

7.3.1 The sale shall be of the whole of the Participant's Participation Interest and Participant shall remain fully liable for its original liabilities and obligations under this Agreement and Lender and the Other Participant(s) shall have no contractual, legal or other obligations to any assignee of the Participant or any subparticipants, but rather, Lender and the other Participant(s) shall be entitled to continue to look solely to Participant for the performance of Participant's obligations and the exercise of Participant's rights under this Agreement.

7.3.2 Participant will not assign its interest in this Agreement and will not sell its Participation Interest in the Loan, except:

(i) to a purchaser who agrees, in writing under an agreement acceptable to Lender, to be bound by the terms and conditions of this Agreement, and

(ii) pursuant to a sale which is exempt from the requirement for a registration or filing under the Federal Securities Act or any applicable Blue Sky Laws and does not require the registration or filing of an exemption from registration of the Loan, such sale or Participants' Interest in the Loan, and

(iii) then only to an Institutional Investor.

7.3.3 Lender shall be notified in writing by the Participant of the name and address of the designated purchaser.

7.3.4 Prior to Participant selling its Participation Interest it shall first offer its Participation Interest to the Lender by notice in writing addressed to the Lender stating the sale terms and specifying the sum the selling Participant fixes as the price for the sale. If the Lender fails to notify the selling Participant within ten (10) days after receipt of the notice that it desires to purchase the Participation Interest of the selling Participant at the specified price, the selling Participant shall then offer its Participation Interest to the Other Participant(s) by notice in writing addressed to the others stating the sale terms and specifying the sum the selling Participant fixes as the price for the sale. If the Other Participant(s) fail to notify the selling Participant within the time hereafter limited that one or more of them desires to purchase the Participation Interest of the selling Participant at the specified price, the selling Participant shall be free to sell its Participation Interest to the designated purchaser at a price not less than the aforesaid specified price (if the selling Participant wishes to sell its Participation Interest at a price less than the aforesaid specified price, the Lender and the Other Participant(s) shall be given the first opportunity at the reduced price in accordance with the terms of this paragraph). The Other Participant(s) shall have a period of ten (10) days from the date of the notice within which to notify the selling Participant that one or more of them is willing to purchase the Participation Interest of the selling Participant at the specified price. If the selling Participant is so advised, the selling Participant shall be bound to sell its Participation Interest and the Lender or the Other Participant(s) so notifying the selling Participant shall be bound to purchase the Participation Interest at the specified price and such sale and purchase shall be completed, subject to adjustment if intervening Collections are paid within twenty (20) days after the giving of notice in writing as mentioned.

7.4 **Reserved Rights to Lender**. Lender reserves the right to offer and/or sell additional participations in the Loan to Institutional Investors. Notwithstanding Section 7.3, Lender reserves the right to assign, pledge or transfer its Participation Interest in the Loan and this Agreement to a third party as security for any loan obtained by Lender the proceeds of which are to be disbursed by Lender to Borrower under the Loan Documents and in furtherance thereof Lender may collaterally assign and pledge the Note and Loan Documents under a Collateral Assignment of Note and Loan Documents that recognizes the right of Participant hereunder ("Collateral Assignment"). Pursuant to the Collateral Assignment, the holder thereof may be entitled upon a default under the loan made to Lender to realize upon and exercise the Collateral Assignment and succeed to the interest of Lender in any Loan Documents and this Agreement and shall thereafter be substituted in place of Lender as lender under this Agreement. Participant acknowledges and consents to the foregoing.

7.5 Transfer of Responsibilities. In the event that:

(a) Lender shall default in its obligation to Participant hereunder; or

(b) Lender shall breach the terms of this Agreement; or

(c) Lender shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in voluntary bankruptcy or for an arrangement or reorganization pursuant to the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing ("Bankruptcy Proceeding"), or shall become "insolvent" as that term is defined in the Federal Bankruptcy Code, or shall file an answer admitting insolvency or inability to pay or shall fail to pay its debts as they become due, or shall fail to obtain a vacation or stay of any involuntary Bankruptcy Proceeding within one hundred twenty (120) days after the institution of the same, or shall be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding, or shall have a custodian, trustee or receiver appointed for or have any court take jurisdiction of its property, or any part thereof, in any voluntary proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee or receiver shall not be discharged or such jurisdiction not be relinquished, vacated or stayed within one hundred twenty (120) days; or

(d) Lender shall be dissolved, wound up, fail to maintain its existence or shall be assigned, merged into, or consolidated with another entity other than: (i) pursuant to a plan of consolidation or merger into, with or as part of Lender or Lender's affiliates; or (ii) any entity currently owning Lender or an affiliate thereof; or

(e) Any material representation or warranty by Lender hereunder shall be false or misstated;

then, in such event upon the written demand of a Majority Interest, Lender shall turn over to and shall assign, endorse and transfer the Loan Documents and other loan collateral to one of the Participants as selected by the Majority Interest, without recourse, and Lender shall be relieved of its obligations hereunder, and if Lender retains a Participation Interest in the Loan, shall become solely a Participant with the rights of a Participant and with no right or obligation to administer the Loan.

7.6 Resignation. Lender may on thirty (30) days advance written notice to Participant resign its obligations under this Agreement. Upon any such resignation, the Majority Interest of Participants shall have the right to appoint a successor to the Lender's position and upon written direction from the Majority Interest of Participants, Lender shall assign and endorse the Loan Documents, without warranty or recourse, to the order of the appointed successor. If Lender shall not have received a written direction from the Majority Interest of the Participants within such thirty (30) days, the Lender shall endorse and assign the Loan Documents, without warranty or recourse,

to the Participants in common. Upon such resignation, Lender shall be relieved of its responsibilities under this Agreement; provided that as to actions taken or omitted to be taken prior to such resignation, the provisions of this Agreement shall continue to inure to Lender's benefit.

7.7 Successors and Assigns. Lender may at any time assign its rights and obligations pursuant to this agreement *and the Loan Documents*: (1) to an affiliate of the Lender; or *(2) to a non-affiliated institution or to the Participants if Lender in its sole discretion deems such an assignment necessary to comply with the Tribal-State Compact between the St. Regis Mohawk Tribe and the State of New York and the requirements of the State of New York Racing and Wagering Board.* Lender will provide written notice of this assignment to all participants within thirty (30) days after the assignment. This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto, and to the extent permitted hereunder, their respective successors and assigns, to the same extent as if specified at length throughout this Agreement.

7.8 Time of the Essence. Time is of the essence of this Agreement and each and every date set forth herein.

7.9 Governing Law. This Agreement shall be deemed to constitute a contract under and shall be construed and enforceable in accordance with the laws of the State of Minnesota.

7.10 Judicial Interpretation. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

7.11 No Amendment. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

7.12 Construction. Article, Section and Subsection headings in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

7.13 No Partnership. This instrument creates a Participation in the Loan and neither the execution and performance of this Agreement nor the sharing in the Loan, the Collections and the Collateral is intended to be, nor shall it be construed to be, the formation of a partnership or a joint venture between Lender and Participant.

7.14 Indemnification. The Participants shall, in accordance with their Participant Percentage, indemnify the Lender (to the extent not reimbursed by the Borrower) against any cost, expense (including legal fees and disbursements), claim, demand, action, loss or liability (except such as result from the Lender's gross negligence or willful misconduct) that the Lender may suffer or incur in connection with this Agreement and the Loan Documents or any action taken or omitted by the Lender hereunder or thereunder. The Lender may apply any payments received from the Borrower or any other Obligor first to reimburse itself for such costs, expenses, claims, demands, actions, losses and liabilities. This provision survives the termination of this Agreement.

7.15 **Confidentiality**. Except as otherwise required by law, nonpublic information regarding the Borrower given by the Lender to the Participant (exclusive of information already in the public domain or information received by Participant from sources other than Lender) will be treated by the Participant as confidential, may not be disclosed to any other party without the Lender's and Borrower's prior written consent, and will not be used by Participant or any of its affiliates for any purposes other than as contemplated by this Agreement. Participant shall not make any public announcement or employ any advertising, including without limitation, press releases or advertisements referred to as "tombstone advertisements," with respect to the transactions contemplated hereby, or include the Borrower's name on any client lists, without the Borrower's and the Lender's prior written approval.

7.16 **Entire Agreement**. This agreement and the Certificate of Participation for the Participant contains the entire understanding of the parties hereto in respect to the transaction contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

LENDER:

MILLER & SCHROEDER INVESTMENTS CORPORATION

By: _____
Kenneth R. Larsen
Vice President

PARTICIPANT:

COMMUNITY NATIONAL BANK

By: _____

Its: _____

EXHIBIT "A"

List of Loan Documents

1. Loan Agreement between President R.C. - St. Regis Management Company (the "Borrower") and Miller & Schroeder Investments Corporation (the "Lender")

2. Promissory Note of the Borrower to the Lender in the amount of $8,690,000, dated February 24, 1999

3. Escrow Agreement between the Borrower, the Lender and U.S. Bank Trust National Association, as Escrow Agent

4. Notice and Acknowledgment of Pledge between the Borrower, the Lender and St. Regis Mohawk Tribe (the "Tribe") with approving resolution of the Tribe

EXHIBIT "B"

1.	Principal Amount of Loan:	$8,690,000
2.	Borrower:	PRESIDENT R.C. - ST. REGIS MANAGEMENT COMPANY
3.	Participant's Participation Percentage:	3.452%
4.	Maximum Principal Amount of Participation:	$300,000
5.	Participation Rate:	Note Rate
6.	Addresses for Notices:	

As to Lender:

MILLER & SCHROEDER INVESTMENTS CORPORATION
220 South Sixth Street, Suite 300
Minneapolis, Minnesota 55402
Attn: Gaming Department

As to Participant:

COMMUNITY NATIONAL BANK
733 North Main Street
Oregon, WI 53575-1003
Attn: Jerry Luebke

EXHIBIT "C"

FORM OF
CERTIFICATE OF PARTICIPATION NO. 17

COMMUNITY NATIONAL BANK

DATE: March 1, 1999

TO: COMMUNITY NATIONAL BANK
733 North Main Street
Oregon, WI 53575-1003

THIS IS TO CERTIFY that as of this date COMMUNITY NATIONAL BANK ("Participant") has an aggregate participation in the following described loan held by Miller & Schroeder Investments Corporation ("Lender"), pursuant to the provisions of that certain Participation Agreement entered into between Participant and Lender dated March 1, 1999.

LENDER:	MILLER & SCHROEDER INVESTMENTS CORPORATION
BORROWER:	PRESIDENT R.C. - ST. REGIS MANAGEMENT COMPANY
AMOUNT OF LOAN:	$8,690,000
DATE OF NOTE:	February 24, 1999
PARTICIPATION RATE:	Note Rate
TOTAL AMOUNT OF PARTICIPATION INTEREST:	$300,000
PARTICIPATION PERCENTAGE:	3.452%

THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE AFORESAID PARTICIPATION AGREEMENT BETWEEN LENDER AND PARTICIPANT. TRANSFER OF THE LOAN PARTICIPATION REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY AND SUBJECT TO THE PROVISIONS OF THE AFORESAID PARTICIPATION AGREEMENT AND MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH SUCH AGREEMENT.

MILLER & SCHROEDER
INVESTMENTS CORPORATION

/SPECIMEN/

Kenneth R. Larsen
Vice President

05 16 126625802 #2
PRESIDENT R.C.-ST. REG MANAGEMENT CO.
MILLER & SCHROEDER INVESTMENTS CORP.

PARTICIPATION AGREEMENT

266259

BETWEEN

MILLER & SCHROEDER INVESTMENTS CORPORATION

AND

FIRST NATIONAL BANK & TRUST

FOR A PARTICIPATION INTEREST

IN THE

$3,492,000 EQUIPMENT LOAN

TO

PRESIDENT R.C. - ST. REGIS MANAGEMENT COMPANY

Akwesasne Mohawk Casino
St. Regis Mohawk Reservation
Hogansburg, New York

(St. Regis II)

THIS PARTICIPATION AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into as of the 1st day of March, 1999 between FIRST NATIONAL BANK & TRUST (the "Participant") and MILLER & SCHROEDER INVESTMENTS CORPORATION, a Minnesota corporation (the "Lender").

PRELIMINARY RECITALS

WHEREAS, the Lender anticipates funding an equipment loan to President R.C. - St. Regis Management Company (the "Borrower") in the amount of $3,492,000 dated February 24, 1999 (the "Loan").

WHEREAS, the Loan is evidenced by a Promissory Note to the Lender executed and delivered by Borrower in the aggregate amount of the Loan.

WHEREAS, the Participant is desirous of purchasing from Lender a Participation Interest in the Loan.

WHEREAS, Lender is willing to sell a Participation Interest in the Note to the Participant and may retain and/or sell to others the remaining Participation Interest in the Loan.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and provisions herein contained, the parties hereto do hereby covenant and agree as follows:

Asmus Aff.,
Ex. M

1. DEFINITIONS. For purposes of this Agreement:

"Advances" means the from time to time principal of the Loan disbursed.

"Assignment of Payments" means the Collateral Assignment of Contract Rights from the Borrower to Lender.

"Borrower" means President R.C. - St. Regis Management Company, a New York general partnership.

"Collateral" means the Loan Documents, the Property and interests in the Property now or hereafter securing the Loan and any and all security interests, security titles, liens, claims, endorsements and guaranties of whatever nature now or hereafter securing the Loan.

"Collections" means all monies or other Property hereafter received by Lender on account of the Loan including, without limitation, principal, interest, prepayment premiums, late charges, and all other sums realized from:

(i) any Collateral;
(ii) any Obligor;
(iii) payments under the Assignment of Payments;
(iv) the exercise of any remedies or foreclosure by Lender of any liens, security interests, claims or rights of setoff with respect to the collateral or any deposit balance or other Property of any Obligor; and
(v) Enforcement Procedures.

"Contract" means the Fourth Amended and Restated Management Agreement between the Borrower and the St. Regis Mohawk Tribe.

"Enforcement Procedures" has the meaning ascribed thereto in Section 6.2.

"Equipment" means the items of Equipment described in the Security Agreement which secures the Loan.

"Event of Default" has the meaning ascribed thereto in Subsection 6.2.1.

"Extraordinary Expenses" means all costs, expenses (including, without limitation, court costs, attorneys' fees and legal expenses, including costs, fees and expenses of appeal), taxes, assessments, insurance premiums, any charges required by the Loan Documents to be paid, or expenses which, in the good faith opinion of Lender, are necessary or desirable to protect or preserve any Collateral, and any and all other out-of-pocket expenses which are incurred by Lender, including the fees and costs of any professionals hired by Lender (and not promptly paid or reimbursed by Borrower) at any time or from time to time hereafter, in connection with:

(i) the collection or enforcement of the Loan;
(ii) the preservation of the Collateral;
(iii) the collection or enforcement of Borrower's liabilities or the liabilities of any Obligor;
(iv) the sale, disposition or other realization upon or the recovery of possession of the Collateral;
(v) any Enforcement Procedures; or

(vi) the filing and prosecution of a complaint with respect to any of the above matters or the defense of any claim, actual or threatened, by Borrower, a receiver or trustee in bankruptcy for, or other representative of, Borrower, any Obligor or third party, for, on account of, or with respect to the Loan or the Loan Documents, whether to recover damages for business interference, for liabilities or debts of Borrower (including, without limitation, taxes), for alleged preferences or fraudulent conveyances or transfers received or alleged to have been received from Borrower or any such Obligor as a result of the Loan or in connection with any Collections, or otherwise, and shall include the amount of any recovery from Lender in such litigation or proceeding, whether by settlement or pursuant to a judgment.

"Facility" means the Akwesasne Mohawk Casino located on the St. Regis Mohawk Reservation in Hogansburg, New York.

"Guarantor" means any person or entity who has executed any instrument agreeing to act as a security or guarantor of the Loan or any portion thereof.

"Institutional Investor" means any:

a) insurance company (as defined in Section 2(13) of the Securities Act of 1933); or

b) any employee benefit plan within the meaning of the Title I of the Employee Retirement Income Security Act of 1974 which meets the following:

(i) has the investment decision made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser; or

(ii) the employee benefit plan has total assets in excess of $5,000,000.

c) an entity which has total assets in excess of $5,000,000, was not formed for the specific purpose of investing in the Loan, and is one or more of the following:

(i) a corporation; or
(ii) a Massachusetts or similar business trust; or
(iii) a partnership.

d) a trust with total assets exceeding $5,000,000 which was not formed for the specific purpose of acquiring a participation in the Loan and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the investment in the Loan.

e) an entity in which all the equity owners are accredited investors (within the meaning of Regulation D of Securities Act of 1933).

f) any bank (as defined in Section 3(a)(2) of the Securities Act of 1933) or savings and loan association or institution (as defined in Section 3(a)(5)(A) of the Securities Act of 1933).

"Lender" means Miller & Schroeder Investments Corporation, a Minnesota corporation.

"Loan" means the Loan made by Lender to Borrower subject to and in accordance with the terms of the Note in the amount of $3,492,000.

"Loan Documents" means all of the documents evidencing and securing the Loan including, without limitation, those documents referred to in Exhibit "A" attached hereto and incorporated herein by reference.

"Majority Interest" means those Participants who in the aggregate hold at least 66% of the total principal of the Loan evidenced by Participation Interests.

"Maximum Principal Amount of Participation" means the amount purchased for each Participant pursuant to the Participation Agreement for each Participant.

"Note" means the Promissory Note of the Borrower to Lender dated February 24, 1999, in the amount of $3,492,000.

"Note Rate" means the rate of interest, from time to time, charged on the Note and as more fully set forth therein.

"Obligor" means any person or entity who is or may in the future become obligated to Lender with respect to the Loan including, without limitation, Borrower and any Guarantor.

"Other Participant(s)" means any other person or entity, whether one or more, who holds a Participation Interest, including Lender if it retains a Participation Interest in the Loan.

"Participant" means the party identified in the preamble to this Agreement as "Participant".

"Participants" means the Participant, the Other Participants and the Lender, if it retains a Participation Interest in the Loan.

"Participation Interest(s)" means the individual interests of the Participants in the Loan.

"Participation Percentage" means the percentage amount that the Maximum Principal Amount of Participation of Participant in the Loan bears to the entire original principal amount of the Loan expressed as a percentage.

"Participation Rate" means the per annum interest rate to be payable to Participant on its Participation in the Loan as identified in Exhibit "B".

"Payments" means all revenues and payments of money paid to Borrower under the Contract.

"Proceeds" means amounts payable pursuant to any insurance policy insuring against loss or damage to the Property or the income therefrom, and the payments pursuant to any performance, payment, lien or material bond if issued in favor of the Lender as obligee.

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"Property" means any collateral or security which secures the Loan as described in the Loan Documents.

"Servicing Fee" means the fee paid by the Borrower to the Lender for administering the Loan in accordance with this Agreement.

2. SALE OF PARTICIPATION.

2.1 Sale and Purchase. Lender hereby sells and Participant hereby purchases an undivided interest in and to the Loan and in the Collateral and in the Collections in an amount equal to Participant's Maximum Principal Amount of Participation.

2.2 Relationship of Parties. The relationship between Lender and Participant is and shall be that of a seller and purchaser of a property interest (i.e., an outright, absolute partial assignment of an undivided interest in and to the Loan, in the Collateral and in the Collections) and not a creditor-debtor relationship. The Participant hereby approves of and authorizes the Lender to be named as the nominal payee of the Note and nominal beneficiary of each Guaranty and the nominal secured party under the Loan Documents, and, subject to the provisions of this Agreement, to generally act as agent for all the Participants in the holding and disposition of the Collateral. The Lender agrees that the Lender holds the security interests and other interests granted by the Note and the Loan Documents not in its individual capacity but rather as agent for the Participants in accordance with this Agreement.

2.3 Pari Passu Interests. The respective interests of Lender, Participant and all Other Participants in and to the Loan, in the Collateral and in the Collections shall be pari passu and no party shall have any priority over the other. The Participant agrees that if it shall; by exercising any right of setoff or counterclaim or otherwise, receive payment of a proportion of the aggregate amount of principal and interest due with respect to the Loan, the Participant shall pay the same over to the Lender, for distribution by the Lender among the Participants as Collections in accordance with this Agreement.

2.4 Disgorgement. If the Lender is required to refund to the Borrower or any Guarantor or a trustee in bankruptcy or any of them (on account of a preference or otherwise) any amount in connection with this Agreement, then the Participant shall pay to the Lender its Participation Percentage of the refund.

2.5 Certificate of Participation. Lender shall execute and deliver to Participant a Certificate of Participation in the form attached hereto as Exhibit "C" and incorporated herein by reference (with appropriate insertions) evidencing Participant's share in the Loan.

3. LOAN DOCUMENTS.

3.1 Participant's Representations. Participant acknowledges and agrees that Lender shall hold the Loan Documents and other Collateral in its name for the benefit of the Lender, the Participant and the Other Participant(s). Participant has received and made a complete examination of copies of all Loan Documents it requires to be examined and approves of the form and content of the same. Participant acknowledges that Participant has been provided with or granted access to all of the financial and other information that Participant has requested or believes to be necessary to enable Participant to make an independent and informed judgment with respect to the Collateral, Borrower and any Obligor and their credit and the desirability of purchasing an undivided interest in

the Loan. Participant has, without reliance on Lender and based upon such documents and information as the Participant has deemed appropriate, made its own credit analysis and decision to purchase its participation interest in the Loan. Participant is participating with Lender based upon Participant's own independent examination and evaluation of the Loan transaction and the information furnished with respect to Borrower and without any representations or warranties from Lender as to the Borrower's financial suitability, the appropriateness of the investment and the value and security of the Collateral. The Participant's execution and delivery of this Agreement and its purchase of an undivided interest in the Loan does not constitute a violation of any agreement, law, statute, regulation, decree or decision (including any legal lending limits) which is binding on it. PARTICIPANT REPRESENTS THAT IT IS AN INSTITUTIONAL INVESTOR. FURTHER, PARTICIPANT ACKNOWLEDGES THAT LENDER'S ASSETS AND CREDIT ARE NOT PLEDGED TO REPAYMENT OF THE LOAN. PARTICIPANT ACKNOWLEDGES THAT LENDER MAKES NO WARRANTY OR REPRESENTATION AND SHALL NOT BE RESPONSIBLE FOR ANY STATEMENT, WARRANTY OR REPRESENTATION MADE IN CONNECTION WITH THE COLLATERAL OR ANY DOCUMENT IN CONNECTION WITH THE LOAN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PARTICIPANT ACKNOWLEDGES THAT LENDER HAS MADE NO GUARANTY OF REPAYMENT, IT BEING UNDERSTOOD PARTICIPANT SHALL LOOK ONLY TO BORROWER, ANY OBLIGOR AND TO THE COLLATERAL FOR REPAYMENT OF THE LOAN.

PARTICIPANT ACKNOWLEDGES THAT THE STATE OF NEW YORK RACING AND WAGERING BOARD MAY REQUIRE CERTAIN INFORMATION ABOUT THE PARTICIPANT IN CONNECTION WITH THE LOAN. PARTICIPANT AGREES TO COOPERATE WITH THE STATE OF NEW YORK RACING AND WAGERING BOARD.

3.2 Transfer/Pledge of Loan Documents. The Loan Documents shall not be pledged, transferred or assigned without the unanimous consent of all of the Participant(s). However, nothing herein shall prohibit the further sale by Lender of participations in its remaining interest in the Loan or sale of any participation interest it repurchases pursuant to Paragraph 7.3, and nothing shall prohibit the pledge or assignment by Lender of its remaining interest in the Loan as security for a loan made to Lender pursuant to the rights reserved in Paragraph 7.4.

3.3 Participant's Consent.

3.3.1 Consent of Majority Interest Required. Unless otherwise provided in this Agreement, the Lender may only take action with respect to the Loan Documents and the Collateral with the consent of a Majority Interest.

3.3.2 No Consent Required. Notwithstanding the provisions of the foregoing paragraph 3.3.1, and subject to the provisions of Article 6, Participant agrees that Lender shall be entitled to deal with the Loan and take such actions as the Lender would take for a similar loan in its own account in the ordinary course of business (including a substitution of collateral of a type and value acceptable to Lender) and, subject to the provisions of Article 6 [Event of Default], Lender shall on behalf of itself and the Participant(s) and Other Participants(s) make all decisions and take such action required to be made or taken by the holder of the Note under the terms of the Loan Documents.

3.3.3 Corrective Actions. The Lender may, at any time without the consent of Participant(s), subject to the conditions and restrictions set forth in the Loan Documents, enter into supplements of the Loan Documents for any one or more of the following purposes:

(i) to correct or amplify the description of any property subject to the lien of the Loan Documents;

(ii) to grant to the Lender one or more additional properties as security for the Loan provided; or

(iii) to cure any ambiguity, or to cure, correct or supplement any defective or inconsistent provision contained therein.

3.3.4 Unanimous Consent Required. Except as provided for in Article 6 (upon the occurrence of an Event of Default), unanimous consent shall be required from all Participants to deprive any Participant of the benefit of the lien of the Loan Documents upon any of the property for the security of the Loan, including, but not limited to, (i) required repayment of the Loan; (ii) optional prepayment; (iii) voting percentages; and (iv) interest rate.

4. ADMINISTRATION

4.1 Administration. Lender shall administer the Loan for the benefit of the Participant and any Other Participant(s) in accordance with the customary policies and procedures under which it administers loans for its own account.

4.2 Disbursement of Loan. Participant hereby authorizes Lender to make Advances of the proceeds of the Loan in accordance with the Loan Documents and Participant acknowledges and Lender agrees that the proceeds of the Loan shall be disbursed by Lender to Borrower pursuant to the Loan Documents. Upon request, Lender shall provide Participant with copies of all applications for payment submitted by Borrower. Each Advance shall be disbursed ratably for the account of all Participants in their respective Participation Percentage.

4.3 Participation in Loan Disbursements. As and when an Advance is required to be made under the Loan Documents, Participant shall on or before 10:00 a.m. Central time on the day of a requested Advance deposit in Lender's settlement account at Norwest Bank Minnesota, National Association, in federal funds or other funds current in Minneapolis, Minnesota, Participant's Participation Percentage of such Advance. Lender shall give Participant written or telephonic notice of Participant's Participation Percentage of any proposed disbursement of an Advance at least three (3) business days in advance of each such disbursement. In the event Lender shall have made previous disbursements of the Loan to Borrower, Participant shall upon request by Lender within three (3) business days thereafter deposit with Lender in the foregoing manner Participant's Participation Percentage of the total amount of such previous disbursements. In the event Participant fails to furnish to Lender at the time called for an Advance with immediately available funds equal to its Participant Percentage of the amount of such Advance, Lender shall have the right but, between the Participant and Lender, not the obligation, to advance such funds on behalf of Participant and any funds so advanced shall constitute a loan to Participant bearing interest at four percent (4%) in excess of the Note Rate from the date advanced by Lender and shall be due and payable by Participant to Lender upon demand. In no event shall Lender have any obligation to advance any such funds on behalf of Participant at any time hereunder.

4.4 Collections and Servicing of Loan. Lender shall collect from Borrower or any Obligor any and all Collections, all in accordance with Lender's usual practices and procedures under which it administers loans for its own account and shall, subject to Article 6 (occurrence of an Event of Default), exercise for the benefit of itself, Participant and all Other Participant(s) all rights and interests (including Participant's rights and interests) with respect to the Loan, the Loan Documents

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and other Collateral. Lender shall hold the pro rata portion of all Collections received by Lender for Participant and Lender shall promptly account for and pay to Participant, by check to Participant, Participant's portion of any and all such Collections in such funds current in Minneapolis, Minnesota. Until remitted to the Participant, the Lender will hold Participant's share of all Collections as agent for the Participant. Participant's portion of any Collections shall be that amount equal to its Participation Percentage thereof; provided, however, that with respect to portions of Collections comprising interest, Participant shall be entitled to receive interest at the Participation Rate on amounts advanced by Participant.

4.5 Books and Records. Lender shall maintain books and records reflecting all financial transactions of Lender relating directly to the Loan which books and records shall be available to the Participant during Lender's office hours. Lender agrees to provide access, upon request by the Participant, to all loan documentation in its possession or control to the Participant, the Office of Thrift Supervision, its District Director, or the examinations and supervision staff. Lender shall not be required to segregate from its own funds Participant's share of Collections actually received, or to maintain separate, internal records with respect to Participant's share of the Loan (other than the Certificates of Participation).

4.6 Expenses. All normal costs and expenses associated with Lender's overhead in collecting the Loan shall be paid for by Lender. Upon demand by Lender, however, Participant shall pay to Lender in proportion to Participant's Participation Percentage of the Loan its portion of all Extraordinary Expenses incurred by Lender in connection with the Loan and not promptly paid or reimbursed by Borrower.

4.7 Insurance. All insurance policies for which a lender's loss payee endorsement is required shall name the Lender as loss payee. Lender shall adjust, compromise, or settle any insurance policies and in the exercise of its sole discretion shall take any and all actions the Lender may deem appropriate or advisable in connection with the same. Lender shall hold the proceeds received on behalf of Participant, any Other Participant(s) and shall apply the same in accordance with the provisions of the Loan Documents. If the Loan Documents provide for application at the discretion of the holder thereof, or if Lender is requested by Borrower to apply the proceeds inconsistent with the provisions of the Loan Documents, then Lender shall notify the Participant, any Other Participant(s) of the same and the directions of the Majority Interests shall govern such application; provided, however, in the event that the Majority Interests are unable to agree upon any such application within such period as the circumstances may in Lender's judgment reasonably require, Lender shall have the sole right and authority to decide as to any such application and its good faith decision shall be binding upon Participant with the same force and effect as if Participant had concurred therein. Any proceeds received by Lender which are not required by the Loan Documents to be paid to Borrower or a third party shall be paid to Participant as Collections in proportion to Participant's Participation negotiated.

4.8 Litigation Regarding the Loan. If Lender is of the opinion that the services of an attorney should be retained for the protection of the interest of Lender, Participant, any Other Participant(s), Lender shall select and retain an attorney to represent Lender, Participant, any other Participant(s). Participant, any Other Participant(s) shall pay on demand its portion of the fees and expenses of such attorney in proportion to its Participation Percentage of the Loan.

4.9 Servicing Fee. The Borrower shall pay to Lender a Servicing Fee as defined in the Loan Documents, as compensation to the Lender for acting as principal hereunder and administering the Loan.

4.10 Commitment Fees. Participant shall have no claim to any commitment fee, origination fee, brokerage fee, facility fee or other similar fee paid to Lender for the origination of the Loan nor any fee negotiated for the servicing of the Loan.

4.11 Documentation Fee. Participant shall be paid a documentation fee by the Lender of 1% of the Maximum Principal Amount of Participation.

4.12 Lender's Right to Offset. Notwithstanding anything to the contrary in this Agreement, Lender may, in its sole discretion, with or without notice to the Participant, offset from Participant's share of Collections: (1) any Extraordinary Expenses incurred in connection with the Loan; and (2) any legal fees and expenses incurred in connection with the litigation of the Loan.

5. LENDER'S DUTY OF CARE AND RESPONSIBILITY TO PARTICIPANT.

5.1 Risk of Nonpayment. Participant accepts the full risk of nonpayment by Borrower and any other Obligor of the Loan and of Participant's interest in the Loan and agrees that Lender shall not be responsible for nor warrants or represents the payment, performance or observance by Borrower or any other Obligor of any of the terms, covenants or conditions of the Loan Documents.

5.2 No Warranties. Participant specifically acknowledges that Lender has made no warranty or representation, express or implied, to Participant with respect to the solvency, condition (financial or other) or future condition (financial or other) of Borrower, any Obligor, Lender, or the Collateral. Participant also acknowledges that Lender makes no warranty or representation as to and shall not be responsible for the due execution, legality, validity, enforceability, genuineness, sufficiency or collectibility of the Collateral or any document relative thereto. Lender shall not be responsible for the performance or observance of any of the terms, covenants or conditions of the Loan Documents and shall not have any duty to inspect the property (including the books and records) of any Borrower or Guarantor.

5.3 Duty of Care. In its capacity under this Agreement, Lender shall only be accountable for the management and administration of the Loan in accordance with the customary policies and procedures under which it administers loans for its own account and shall not be liable for any negligence or default save the direct acts or omissions of itself and its employees and then only arising out of gross negligence or willful misconduct. In the exercise of any of its duties or powers or in its administration of the Loan, the Lender may act on the advice of or information obtained from any accountant, attorney, appraiser, evaluator, surveyor, engineer or architect or other expert and shall not be responsible for any loss occasioned by acting thereon and shall be entitled to take legal or other advice and employ such assistance as may be necessary to the proper discharge of its duties and to pay proper and reasonable compensation for all such legal and other advice or assistance which compensation shall be an "Extraordinary Expense" and, upon demand of Lender, shall be paid by the Participant in its Participation Percentage. The Lender shall not be responsible for any negligence or misconduct on the part of any accountant, attorney, appraiser, evaluator, surveyor, engineer, architect or other expert or be bound to supervise the proceedings of any such appointee provided that Lender shall use reasonable care in the selection of such person or firm. Notwithstanding anything to the contrary contained in the Agreement or in any law applicable generally to transactions of the type evidenced by this Agreement, Lender may act upon any written or oral notice, or any consent, certificate, cable, telex or other instrument or writing believed by Lender to be to be genuine. Lender shall not be liable to Participant under any circumstances directly or indirectly, for any action taken or omitted to be taken by it in good faith, nor shall the Lender be liable or responsible for the consequences of any oversight or errors of business judgment made in good faith in the exercise of its reasonable judgment. The Lender shall not be liable with

respect to any action taken or omitted to be taken by Lender in accordance with any written instruction furnished to the Lender by the Majority Interest of Participant(s).

6. DEFAULT AND ENFORCEMENT OF REMEDIES.

6.1 Notice of Defaults. Lender will use its best efforts to give Participant notice of the occurrence of any material and significant default or event of default under any of the Loan Documents of which Lender shall have actual knowledge, but Lender's failure to give Participant any such notice shall not result in any liability on Lender's part to Participant. Lender shall deliver to Participant a copy of any notice of default sent by Lender to Borrower under the Loan Documents.

6.2 Enforcement of Remedies. Lender shall, on behalf of itself and all Participants, enforce any remedies under the Loan Documents (herein generally "Enforcement Procedures"), and in furtherance thereof may select counsel and other professionals of its choice to assist Lender on the following terms and conditions:

6.2.1. In the event of the occurrence of any material and significant default or event of default under any of the Loan Documents of which Lender shall have actual knowledge (a default or event of default under this Subsection 6.2.1 being hereinafter referred to as an "Event of Default"), Lender shall notify each Participant of the Event of Default prior to taking any action:

(i) to accelerate the maturity of the indebtedness evidenced by the Note,

(ii) to exercise any other enforcement rights under the Loan Documents,

(iii) to grant or make extensions, renewals, modifications, waivers, forbearance and indulgences to or with Borrower or any Obligor under the Loan Documents, or

(iv) to effect a restructuring of the Loan.

6.2.2 After the occurrence of an Event of Default and after providing such notice as required by 6.2.1, if a Majority Interest of the Participant(s) shall agree on a course of action and notify the Lender of the same, the Lender shall take the action requested by the Majority Interest of the Participant(s) or, if a Majority Interest of the Participants agree no Enforcement Procedures shall be taken, then to refrain from exercising any Enforcement Procedures. If a Majority Interest of the Participant(s) are unable to agree upon any course of action within such period as the circumstances may require, but in no event to exceed ten (10) days after notification, Lender shall have the sole and exclusive right and authority (but not the obligation) to effect Enforcement Procedures on such terms and conditions as Lender in the exercise of its sole discretion shall deem advisable and any such action made or taken by Lender shall be binding upon the Participant with the same force and effect as if Participant had concurred therein. The Lender shall not be liable with respect to any action taken or omitted to be taken by Lender in accordance with any written instruction furnished to the Lender by the Majority Interest of the Participants.

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6.2.3. In the event of the occurrence of an Event of Default which in the opinion of Lender requires immediate action, Lender shall make a diligent effort to obtain approval by telephone of Majority Interest of Participant(s), but if such Majority Interest of Participant(s) cannot be so contacted or such approval is not immediately forthcoming, Lender shall nevertheless have the sole and exclusive right to take such action as in Lender's judgment is necessary or appropriate in such circumstances.

6.2.4 In the event that Enforcement Procedures are brought and prosecuted by Lender, such proceedings shall be instituted by Lender and counsel of its choice and Lender shall keep Participant informed to the extent of Lender's knowledge as to the progress of the proceedings. Lender may accept reinstatement or redemption of the Loan without the prior consent of Participant, and Participant acknowledges that the Loan may be reinstated or redeemed by Borrower without the consent of Participant.

6.2.5 Under each circumstance where Lender advances additional funds out of pocket and if, within ten (10) days thereafter, the Borrower has not repaid the funds advanced by the Lender then, notwithstanding anything to the contrary contained herein, the Lender may declare such failure an Event of Default by the Borrower and may take action to effect Enforcement Procedures and avail itself of the rights available under the Loan Documents to collect and enforce payment and performance of the same regardless of whether a Majority Interest has consented to the same and Participant agrees not to object to such action on the part of the Lender.

6.2.6 Nothing herein shall be construed as requiring the Lender to advance its own funds (other than may be required of it as a Participant in the Loan) to prevent or cure an Event of Default or to effectuate an Enforcement Procedure.

6.2.7 Except for action expressly required to be taken by Lender hereunder, Lender shall be entitled to refrain from taking any action hereunder unless it shall be indemnified by all Participants to its satisfaction from any and all liability and expense it may incur by reason of taking such action.

6.3 Collection and Related Expenses. All expenses of collection, including without limitation, attorney's fees, publication expenses, foreclosure expenses, transfer fees or taxes, and all expenses incurred by Lender in connection with an Enforcement Procedure are Extraordinary Expenses, and Participant shall pay, on demand, its portion thereof in accordance with its Participation Percentage of the Loan.

6.4 Collection Rights of Lender. In addition to Lender's other rights under Section 6 with respect to the Collateral (including proceeds), Lender may at any time notify any person obligated to pay any amount due on the Collateral (a "Collateral Obligor"), to pay any amount due under the Collateral, that such right to receive payment has been assigned or transferred to Lender and such payments shall be paid directly to Lender. At any time after Lender gives such notice, Lender may (but need not) in its name demand, sue, form, collect or receive any money or property at any time payable or receivable on account of the Collateral, or grant any extension to make any compromise or settlement with or otherwise agree to waive, notify, amend or change the obligations (including collateral obligations) of any Collateral Obligor. As soon as the Lender

acquires the Collateral, it will immediately transfer the Collateral to all Participants as tenants-in-common and Participant agrees to accept delivery of the Collateral.

6.5 Ownership. In the event that the Participants shall become the owners of the Property through an Enforcement Procedure, the Participants shall own (in their Participation Percentages on the Loan) the Property as tenants-in-common and not as joint tenants. All charges, expenses or expenditures on the part of Lender as are incurred (collectively, "Charges") shall be "Extraordinary Expenses" and each Participant shall bear its portion incurred in accordance with its Participation Percentage in the Loan and made payment of the same on demand after Lender requests payment of the same. Any income collected from the Property (after deducting therefrom the Charges incurred) shall be Collections and the respective portion thereof shall be paid to each Participant in accordance with its Participation Percentage in the Loan.

7. MISCELLANEOUS.

7.1 Notices. All notices and other communications shall be given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or delivery by reputable private carrier such as Federal Express, Airborne, DHL or similar private courier service, and addressed as provided in Exhibit "B" attached hereto. Each such notice shall be effective upon being deposited as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time and at any time during the term of this Agreement to change its address and shall have the right to specify as its address any other address within the United States of America.

7.2 Purchase For Its Own Account. Participant represents and warrants to Lender and any Other Participant that subject to the requirement that the assets of a Participant must at times be within its control, the Participant is acquiring the Participation Interest in the Loan for its own account for investment with the present intention to hold the same for investment and not for resale.

7.3 Restrictions on Assignment or Sale. Participant may sell its Participation Interest in the Loan only on the following terms and conditions:

7.3.1 The sale shall be of the whole of the Participant's Participation Interest and Participant shall remain fully liable for its original liabilities and obligations under this Agreement and Lender and the Other Participant(s) shall have no contractual, legal or other obligations to any assignee of the Participant or any subparticipants, but rather, Lender and the other Participant(s) shall be entitled to continue to look solely to Participant for the performance of Participant's obligations and the exercise of Participant's rights under this Agreement.

7.3.2 Participant will not assign its interest in this Agreement and will not sell its Participation Interest in the Loan, except:

(i) to a purchaser who agrees, in writing under an agreement acceptable to Lender, to be bound by the terms and conditions of this Agreement, and

(ii) pursuant to a sale which is exempt from the requirement for a registration or filing under the Federal Securities Act or any applicable Blue Sky Laws and does not require the registration or filing of an exemption from registration of the Loan, such sale or Participants' Interest in the Loan, and

(iii) then only to an Institutional Investor.

7.3.3 Lender shall be notified in writing by the Participant of the name and address of the designated purchaser.

7.3.4 Prior to Participant selling its Participation Interest it shall first offer its Participation Interest to the Lender by notice in writing addressed to the Lender stating the sale terms and specifying the sum the selling Participant fixes as the price for the sale. If the Lender fails to notify the selling Participant within ten (10) days after receipt of the notice that it desires to purchase the Participation Interest of the selling Participant at the specified price, the selling Participant shall then offer its Participation Interest to the Other Participant(s) by notice in writing addressed to the others stating the sale terms and specifying the sum the selling Participant fixes as the price for the sale. If the Other Participant(s) fail to notify the selling Participant within the time hereafter limited that one or more of them desires to purchase the Participation Interest of the selling Participant at the specified price, the selling Participant shall be free to sell its Participation Interest to the designated purchaser at a price not less than the aforesaid specified price (if the selling Participant wishes to sell its Participation Interest at a price less than the aforesaid specified price, the Lender and the Other Participant(s) shall be given the first opportunity at the reduced price in accordance with the terms of this paragraph). The Other Participant(s) shall have a period of ten (10) days from the date of the notice within which to notify the selling Participant that one or more of them is willing to purchase the Participation Interest of the selling Participant at the specified price. If the selling Participant is so advised, the selling Participant shall be bound to sell its Participation Interest and the Lender or the Other Participant(s) so notifying the selling Participant shall be bound to purchase the Participation Interest at the specified price and such sale and purchase shall be completed, subject to adjustment if intervening Collections are paid within twenty (20) days after the giving of notice in writing as mentioned.

7.4 Reserved Rights to Lender. Lender reserves the right to offer and/or sell additional participations in the Loan to Institutional Investors. Notwithstanding Section 7.3, Lender reserves the right to assign, pledge or transfer its Participation Interest in the Loan and this Agreement to a third party as security for any loan obtained by Lender the proceeds of which are to be disbursed by Lender to Borrower under the Loan Documents and in furtherance thereof Lender may collaterally assign and pledge the Note and Loan Documents under a Collateral Assignment of Note and Loan Documents that recognizes the right of Participant hereunder ("Collateral Assignment"). Pursuant to the Collateral Assignment, the holder thereof may be entitled upon a default under the loan made to Lender to realize upon and exercise the Collateral Assignment and succeed to the interest of Lender

in any Loan Documents and this Agreement and shall thereafter be substituted in place of Lender as lender under this Agreement. Participant acknowledges and consents to the foregoing.

7.5 Transfer of Responsibilities. In the event that:

(a) Lender shall default in its obligation to Participant hereunder; or

(b) Lender shall breach the terms of this Agreement; or

(c) Lender shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in voluntary bankruptcy or for an arrangement or reorganization pursuant to the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing ("Bankruptcy Proceeding"), or shall become "insolvent" as that term is defined in the Federal Bankruptcy Code, or shall file an answer admitting insolvency or inability to pay or shall fail to pay its debts as they become due, or shall fail to obtain a vacation or stay of any involuntary Bankruptcy Proceeding within one hundred twenty (120) days after the institution of the same, or shall be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding, or shall have a custodian, trustee or receiver appointed for or have any court take jurisdiction of its property, or any part thereof, in any voluntary proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee or receiver shall not be discharged or such jurisdiction not be relinquished, vacated or stayed within one hundred twenty (120) days; or

(d) Lender shall be dissolved, wound up, fail to maintain its existence or shall be assigned, merged into, or consolidated with another entity other than: (i) pursuant to a plan of consolidation or merger into, with or as part of Lender or Lender's affiliates; or (ii) any entity currently owning Lender or an affiliate thereof; or

(e) Any material representation or warranty by Lender hereunder shall be false or misstated;

then, in such event upon the written demand of a Majority Interest, Lender shall turn over to and shall assign, endorse and transfer the Loan Documents and other loan collateral to one of the Participants as selected by the Majority Interest, without recourse, and Lender shall be relieved of its obligations hereunder, and if Lender retains a Participation Interest in the Loan, shall become solely a Participant with the rights of a Participant and with no right or obligation to administer the Loan.

7.6 Resignation. Lender may on thirty (30) days advance written notice to Participant resign its obligations under this Agreement. Upon any such resignation, the Majority Interest of Participants shall have the right to appoint a successor to the Lender's position and upon written direction from the Majority Interest of Participants, Lender shall assign and endorse the Loan Documents, without warranty or recourse, to the order of the appointed successor. If Lender shall

not have received a written direction from the Majority Interest of the Participants within such thirty (30) days, the Lender shall endorse and assign the Loan Documents, without warranty or recourse, to the Participants in common. Upon such resignation, Lender shall be relieved of its responsibilities under this Agreement; provided that as to actions taken or omitted to be taken prior to such resignation, the provisions of this Agreement shall continue to inure to Lender's benefit.

7.7 Successors and Assigns. Lender may at any time assign its rights and obligations pursuant to this agreement *and the Loan Documents*: (1) to an affiliate of the Lender or *(2) to a non-affiliated institution or to the Participants if Lender in its sole discretion deems such an assignment necessary to comply with the Tribal-State Compact between the St. Regis Mohawk Tribe and the State of New York and the requirements of the State of New York Racing and Wagering Board.* Lender will provide written notice of this assignment to all participants within thirty (30) days after the assignment. This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto, and to the extent permitted hereunder, their respective successors and assigns, to the same extent as if specified at length throughout this Agreement.

7.8 Time of the Essence. Time is of the essence of this Agreement and each and every date set forth herein.

7.9 Governing Law. This Agreement shall be deemed to constitute a contract under and shall be construed and enforceable in accordance with the laws of the State of Minnesota.

7.10 Judicial Interpretation. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

7.11 No Amendment. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

7.12 Construction. Article, Section and Subsection headings in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

7.13 No Partnership. This instrument creates a Participation in the Loan and neither the execution and performance of this Agreement nor the sharing in the Loan, the Collections and the Collateral is intended to be, nor shall it be construed to be, the formation of a partnership or a joint venture between Lender and Participant.

7.14 Indemnification. The Participants shall, in accordance with their Participant Percentage, indemnify the Lender (to the extent not reimbursed by the Borrower) against any cost, expense (including legal fees and disbursements), claim, demand, action, loss or liability (except such as result from the Lender's gross negligence or willful misconduct) that the Lender may suffer or incur in connection with this Agreement and the Loan Documents or any action taken or omitted by the Lender hereunder or thereunder. The Lender may apply any payments received from the Borrower or any other Obligor first to reimburse itself for such costs, expenses, claims, demands, actions, losses and liabilities. This provision survives the termination of this Agreement.

7.15 Confidentiality. Except as otherwise required by law, nonpublic information regarding the Borrower given by the Lender to the Participant (exclusive of information already in the public domain or information received by Participant from sources other than Lender) will be treated by the Participant as confidential, may not be disclosed to any other party without the Lender's and Borrower's prior written consent, and will not be used by Participant or any of its affiliates for any purposes other than as contemplated by this Agreement. Participant shall not make any public announcement or employ any advertising, including without limitation, press releases or advertisements referred to as "tombstone advertisements," with respect to the transactions contemplated hereby, or include the Borrower's name on any client lists, without the Borrower's and the Lender's prior written approval.

7.16 Entire Agreement. This agreement and the Certificate of Participation for the Participant contains the entire understanding of the parties hereto in respect to the transaction contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

LENDER:

MILLER & SCHROEDER INVESTMENTS CORPORATION

By: _____
Kenneth R. Larsen
Vice President

PARTICIPANT:

FIRST NATIONAL BANK & TRUST

By: Rick Nichols
Its: Vice President

ST. REGIS II
NO. 5

EXHIBIT "A"

List of Loan Documents

1. Loan Agreement between President R.C. - St. Regis Management Company (the "Borrower") and Miller & Schroeder Investments Corporation (the "Lender")

2. Promissory Note of the Borrower to the Lender in the amount of $3,492,000, dated February 24, 1999

3. Escrow Agreement between the Borrower, the Lender and U.S. Bank Trust National Association, as Escrow Agent

4. Notice and Acknowledgment of Pledge between the Borrower, the Lender and St. Regis Mohawk Tribe (the "Tribe") with approving resolution of the Tribe

EXHIBIT "B"

1.	Principal Amount of Loan:	$3,492,000
2.	Borrower:	PRESIDENT R.C. - ST. REGIS MANAGEMENT COMPANY
3.	Participant's Participation Percentage:	11.455%
4.	Maximum Principal Amount of Participation:	$400,000
5.	Participation Rate:	Note Rate
6.	Addresses for Notices:	

As to Lender:

MILLER & SCHROEDER INVESTMENTS CORPORATION
220 South Sixth Street, Suite 300
Minneapolis, Minnesota 55402
Attn: Gaming Department

As to Participant:

FIRST NATIONAL BANK & TRUST
22 East Fourth
PO Box 1827
Williston, ND 58802
Attn: Paul Ruzynski

EXHIBIT "C"

FORM OF
CERTIFICATE OF PARTICIPATION NO. 5

FIRST NATIONAL BANK & TRUST

DATE: March 1, 1999

TO: FIRST NATIONAL BANK & TRUST
22 East Fourth
PO Box 1827
Williston, ND 58802

THIS IS TO CERTIFY that as of this date FIRST NATIONAL BANK & TRUST ("Participant") has an aggregate participation in the following described loan held by Miller & Schroeder Investments Corporation ("Lender"), pursuant to the provisions of that certain Participation Agreement entered into between Participant and Lender dated March 1, 1999.

LENDER:	MILLER & SCHROEDER INVESTMENTS CORPORATION
BORROWER:	PRESIDENT R.C. - ST. REGIS MANAGEMENT COMPANY
AMOUNT OF LOAN:	$3,492,000
DATE OF NOTE:	February 24, 1999
PARTICIPATION RATE:	Note Rate
TOTAL AMOUNT OF PARTICIPATION INTEREST:	$400,000
PARTICIPATION PERCENTAGE:	11.455%

THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE AFORESAID PARTICIPATION AGREEMENT BETWEEN LENDER AND PARTICIPANT. TRANSFER OF THE LOAN PARTICIPATION REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY AND SUBJECT TO THE PROVISIONS OF THE AFORESAID PARTICIPATION AGREEMENT AND MAY ONLY BE TRANSFERRED IN ACCORDANCE WITH SUCH AGREEMENT.

MILLER & SCHROEDER
INVESTMENTS CORPORATION

/SPECIMEN/

Kenneth R. Larsen
Vice President

2200 IDS CENTER
80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 977-8400
FACSIMILE (612) 977-8650

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

WRITER'S DIRECT DIAL

(612) 977-8488

WRITER'S E-MAIL

rmark@briggs.com

March 3, 2004

VIA FAX AND MAIL
Edward W. Gale
Leonard, O'Brien, Spencer, Gale & Sayre
55 East Fifth Street
Suite 800
St. Paul, MN 55101-1718

Re: ***In Re: SRC Holding Corporation***
McIntosh County Bank et al. v. Dorsey & Whitney LLP
Adv. Case No. 03-4291

Dear Ed:

I have reviewed your clients' written responses and document production to date. I write to bring two issues to your attention immediately so that the productions on March 8 and 15 can address and incorporate these comments. I am raising these issues without waiving the right to object to any other issues that may arise from your clients' responses.

First, we would like copies of the closing documents and marketing books for the St. Regis I and II Loans that are referenced in your March 1 cover letter. Please send them to me as soon as possible.

Second, it appears that your clients have misunderstood or misinterpreted the definition of "Transaction," as identified on page 5 of Dorsey's discovery requests. Dorsey defined "Transaction" as "the structuring, documentation and closing of the Loans (as those terms are used in the Complaint) and the structuring, documentation, closing and funding of the Banks' participation interests in the Loans." This definition thus requests information and documents relating to any direct oral or written communications that your clients had with Dorsey prior to March 1, 1999 – the date on which a majority of the Participation Agreements were executed. Please keep this in mind for your clients' future responses. In addition, where appropriate, please correct the responses served to date.

Please call me with any questions. Thank you.

Asmus Aff.,
Ex. N

Very truly yours,

Richard G. Mark

RGM/JRA

cc: Dorsey & Whitney

LEONARD, O'BRIEN SPENCER, GALE & SAYRE

Thomas W. Newcome**
Brian F. Leonard+
Eldon J. Spencer, Jr. +
Michael R. O'Brien‡
Edward W. Gale
Grover C. Sayre, III+◊
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George B. Ingebrand, Jr.

+ Also admitted in Wisconsin
▫ Also admitted in Arizona
◊ Also admitted in Iowa
‡ Qualified Neutral (Rule 114)
* Certified Real Property Law Specialist
(Minnesota State Bar Association)
**Retired Status

April 6, 2004

Richard G. Mark, Esq.
Briggs and Morgan
2200 IDS Center
Minneapolis, MN 55402

VIA FACSIMILE & U.S. MAIL

Re: SRC Holding Corporation
McIntosh County Bank et al. v. Dorsey & Whitney LLP
Adv. Case No. 03-4291

Dear Rick:

This follows up on our telephone conversation yesterday morning.

We have agreed to hold the days of April 22nd, April 27th and April 28th to take depositions.

I have checked and I have been told that Mary Jo Brenden is employed with the Marshall Group as an attorney in their gaming department. Please let me know at your earliest convenience if you intend to depose her.

I will need to depose Paula Rindels, Mark Jarboe and possibly others at Dorsey. Since Ms. Rindels appears to have had the most involvement in structuring and closing the loans, I would like to depose her first. Hopefully that will save time with Mr. Jarboe's deposition.

We discussed your concern that our discovery responses included communications after March 1, 1999. This will confirm that the discovery responses produced by the thirty-one banks do include the time frame prior to and including March 1, 1999.

With respect to the issue of expert disclosure, it is our position that this disclosure was stayed pending the courts ruling on motions relating to the Dorsey Defenses. In fact, this issue was specifically included in the courts Amended Scheduling Order. As such, we do not intend to provide the expert affidavit within the time frame you refer to in your April 2, 2004 letter.

I expect to have the marketing books, closing documents, extension agreement and amendment to the loan agreements delivered to your office on or before Wednesday of this week.

Please let me know when the Dorsey documents will be available for us to review.

Thank you.

Very truly yours,

LEONARD, O'BRIEN
SPENCER, GALE & SAYRE

By

Edward W. Gale
Email: egale@losgs.com

H
Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

James E. SANDUM, Appellant,
v.
DOHERTY, RUMBLE & BUTLER, P.A., et al., Respondents.

No. C7-94-801.

Nov. 1, 1994.
Review Denied Jan. 10, 1995.

District Court, Hennepin County; Robert G. Schiefelbein, Judge.

Rebecca E. Bender, Rebecca E. Bender & Assoc., P.A., Minneapolis, for appellant.

Kay Nord Hunt, John R. McBride, Terrance W. Moore, Lommen, Nelson, Cole & Stageberg, P.A., Minneapolis, for respondents.

Considered and decided by PETERSON, P.J., and LANSING and HUSPENI, JJ.

UNPUBLISHED OPINION

HUSPENI, Judge.

*1 Appellant James Sandum challenges entry of summary judgment in favor of respondents Doherty, Rumble & Butler and Helen Starr on appellant's claim for legal malpractice. Because no attorney-client relationship existed between appellant and either Doherty, Rumble & Butler or Helen Starr, we affirm.

FACTS

Servicing Software, Inc. (SSI) retained Doherty, Rumble & Butler (DRB) to provide legal services in connection with making a public stock offering. DRB prepared a registration statement, including a preliminary prospectus, dated February 26, 1992, which included a legend, printed in red, stating that information in the prospectus was "subject to completion or amendment." The prospectus also stated that restricted stock eligible for sale pursuant to 17 C.F.R. 230.144 (rule 144) could not be sold until the 91st day after the effective date of the registration statement of which the prospectus was a part.

This statement was not completely correct, since an exception to rule 144 allows shareholders who have owned restricted shares for more than three years and who have not been affiliated with the corporation for more than three months prior to the public offering to sell their shares without waiting for 90 days. The final prospectus was dated March 18, 1992, the actual date of the public offering, and included the correct information.

James Sandum (Sandum) was a co-founder of SSI and served as an officer and director of the corporation from 1986 until December 31, 1991. At the time of his resignation, Sandum held 196,000 shares of SSI restricted stock. He remained an employee and consultant of SSI until July 1, 1992.

Sandum became interested in selling his stock and was informed by John Haugo, an officer of SSI, that existing shareholders could not sell their stock before the 91st day after the effective date of the registration statement. This information was consistent with the preliminary prospectus prepared by DRB.

Sandum obtained a copy of the preliminary prospectus from Disclosure Incorporated, a company that sells SEC documents to the public, and relied on the information provided by Haugo

**Asmus Aff.,
Ex. P**

and included in the preliminary prospectus in deciding when to sell his shares of stock. Sandum did not inform Helen Starr or any other attorney at DRB that he was interested in selling his shares of SSI stock. Sandum never asked DRB or Starr for representation or legal advice in connection with the public offering, nor did he seek advice from outside counsel about selling his stock.

Sandum never obtained a copy of the final prospectus with the corrected information. He did receive a letter dated May 15, 1992, from Haugo, informing shareholders that the information in the preliminary prospectus regarding the sale of restricted shares was incorrect, but had been corrected in the final prospectus. Sandum began selling his shares immediately after receiving Haugo's letter.

Sandum sued DRB and Starr for legal malpractice, claiming that he would have timed his resignation differently and sold his shares sooner if he had not been misled by incorrect information in the preliminary prospectus. The district court granted respondents' motion for summary judgment, finding that no attorney-client relationship existed between Sandum and DRB or Starr.

DECISION

I. *Discovery*

*2 Sandum contends that the district court granted summary judgment prematurely because discovery had not been completed. We disagree. In deciding whether to grant a continuance to permit further discovery, a court should focus on two issues: (1) whether the party seeking more time is acting from a good faith belief that material facts will be discovered, or is merely engaging in a "fishing expedition," and (2) whether the party has been diligent in seeking discovery prior to bringing the motion. *Rice v. Perl,* 320 N.W.2d 407, 412 (Minn.1982).

Here, Sandum did not make any discovery requests until three months after commencing his lawsuit. He did not notice the depositions of Haugo and Starr, two key figures in the litigation, until after DRB moved for summary judgment. Moreover, the essential facts needed to analyze existence of an attorney-client relationship between Sandum and DRB were undisputed. Further discovery could not have revealed any additional material facts. The court's decision not to continue the summary judgment hearing resulted in no prejudice to Sandum and was not an abuse of discretion. *See id.* (district court has great discretion to determine the procedural calendar of a case).

II. *Summary judgment*

On appeal from summary judgment, this court must decide whether there are any genuine issues of material fact in dispute, and whether the district court erred in its application of the law. *Admiral Merchants v. O'Connor & Hannan,* 494 N.W.2d 261, 265 (Minn.1992). The reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo,* 504 N.W.2d 758, 761 (Minn.1993).

To establish legal malpractice, a plaintiff must establish that: (1) an attorney-client relationship existed; (2) the attorney acted negligently or in breach of contract; and (3) the negligence or breach of contract proximately caused the plaintiff's damages. *TJD Dissolution Corp. v. Savoie Supply Co.,* 460 N.W.2d 59, 62 (Minn.App.1990) (citing *Togstad v. Vesely, Otto, Miller & Keefe,* 291 N.W.2d 686, 692 (Minn.1980)).

In Minnesota, an attorney-client relationship may be established under either a contract theory or a tort theory. *TJD Dissolution Corp.,* 460 N.W.2d at 62. Under a contract theory, the parties must explicitly or implicitly agree that the attorney will provide legal services to the client. *Veit v. Anderson,* 428 N.W.2d 429, 431-32 (Minn.App.1988). Here, it is clear that an attorney-client relationship did not exist between Sandum and DRB under a contract theory. DRB was hired by the corporation. Sandum never had contact with anyone at DRB and did not request DRB to represent him. DRB neither promised to represent Sandum nor billed him for representation. Accordingly, there are no facts in the record from which the district court could have found the existence of an attorney-client relationship under a contract theory. *See TJD Dissolution,* 460 N.W.2d at 62; *Schuler v. Meschke,* 435 N.W.2d 156, 162 (Minn.App.1989), *pet. for rev. denied* (Minn. Apr. 19, 1989).

*3 Sandum argues that an attorney-client relationship existed under a tort theory. We disagree. An attorney-client relationship exists

under a tort theory

> whenever a person seeks and receives legal advice from a lawyer under circumstances in which a reasonable person would rely on the advice.

Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26, 30 (Minn.1982) (citing *Togstad,* 291 N.W.2d at 693 n. 4). It must be shown that:

> [The attorney] rendered legal advice (not necessarily at someone's request) under circumstances which made it reasonably foreseeable to the attorney that if such advice was rendered negligently, the individual receiving the advice might be injured thereby.

Veit, 428 N.W.2d at 432 (quoting *Togstad,* 291 N.W.2d at 693 n. 4). Although the plaintiff does not necessarily have to request legal advice in order to establish the existence of an attorney-client relationship, courts have focused on whether some sort of contact existed between the plaintiff and the attorney. *See Anoka Orthopaedic Assoc. v. Mutschler,* 773 F.Supp. 158, 166 (D.Minn.1991) (material fact issue existed under tort theory where plaintiffs directly hired defendant attorney); *Admiral Merchants,* 494 N.W.2d at 266 (law firm rendered legal advice directly to plaintiff's vice president); *Langeland,* 319 N.W.2d at 31 (no attorney-client relationship found where plaintiff had no direct contact with the attorney); *Schuler,* 435 N.W.2d at 162 (tort theory rejected because plaintiffs did not seek advice and attorney had never represented any of the plaintiffs); *Veit,* 428 N.W.2d at 432 (material fact issue existed under tort theory where plaintiff had direct discussion with attorney and attorney had represented plaintiff on other matters).

In *Langeland,* the supreme court rejected a landowner's argument that an attorney-client relationship existed between the landowners and the bank's attorney, stating:

> Although harm to the [landowners] was a foreseeable result of [the attorney's] failure to effect a timely redemption, [the attorney] did not deal with them directly, and, more importantly, he did not act gratuitously on their behalf. Instead, he was retained by the bank to protect *its* interests by redeeming the property. The protection of the [landowners'] interest in the property was a secondary matter. The [landowners] relied on the bank, not on [the attorney], to take care of the problem. [The attorney's] duty of due care was owed only to his client, the bank.

Id. at 31 (emphasis in original).

The facts here are similar. SSI hired DRB to provide legal representation regarding the public offering. DRB dealt directly with the corporation and did not act gratuitously on Sandum's behalf. Any benefit to Sandum as a shareholder of SSI was merely secondary. Sandum neither sought nor received legal advice from DRB; he relied instead on information he received from an SSI officer.

Although we decline to mandate that direct contact between the plaintiff and the attorney must always occur in order for an attorney-client relationship to exist, the plaintiff's reliance on the legal advice must be reasonable under the circumstances. *See id.* at 30 (plaintiff must reasonably rely on the legal advice). Sandum's reliance on the preliminary prospectus was not reasonable. He was aware that the information it contained was subject to completion or amendment. The final prospectus contained accurate information. Also, Sandum had received the preliminary prospectus from Disclosure, Inc. Knowing that the prospectus was subject to completion or amendment, he should have arranged to receive a copy of the final prospectus as well. The district court correctly concluded that an attorney-client relationship did not exist under a tort theory.

*4 Minnesota law provides a narrow exception that allows nonclients to hold attorneys responsible for negligence. The cases extending the attorney's duty to nonclients are limited to a narrow range of factual situations where the client's sole purpose in retaining an attorney is to directly benefit the third party. *Marker v. Greenberg,* 313 N.W.2d 4, 5 (Minn.1981). In determining the extent of the attorney's duty to a nonclient, the court should consider

> the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury, and the policy of preventing future harm.

Id. Here, SSI did not retain legal counsel to benefit Sandum; it hired DRB to perfect a public offering. A final prospectus prepared by counsel benefits the corporation and potential investors by marketing the corporation to investors while simultaneously disclosing the financial health of the corporation. Any benefit to the corporation's

existing shareholders is secondary.

Because Sandum cannot establish that he had an attorney-client relationship with either DRB or Starr, summary judgment was proper.

III. *Motion to strike*

DRB asks this court to strike a letter from John G. Kinnard and Company, Incorporated, to the SEC dated March 13, 1992, because it was not part of the record on appeal. *See Midwest Family Mut. Ins. Co. v. Amco Ins. Co.,* 422 N.W.2d 758, 760 (Minn.App.1988), *pet. for rev. denied* (Minn. June 29, 1988). The record on appeal consists of papers filed in the trial court, exhibits, and transcripts of proceedings, if any. Minn.R.Civ.App.P. 110.01. Although Sandum states that the letter was offered to the district court during the summary judgment hearing, this court has no way of verifying this assertion because the record does not contain a transcript of the hearing. Once a document is challenged as being outside the record, the burden is on the party wishing to include the document to establish that the document was part of the record. *See Mitterhauser v. Mitterhauser,* 399 N.W.2d 664, 667 (Minn.App.1987) (appellant bears the burden of providing an adequate record on appeal) (citing *Custom Farm Servs., Inc. v. Collins,* 306 Minn. 571, 572, 238 N.W.2d 608, 609 (1976)). Sandum has not met this burden. DRB's motion to strike the letter is granted. [FN1]

> FN1. Respondents also sought to strike an appellate court affidavit from appellant's attorney. Because we have striken the challenged letter, we need not address the issue of the affidavit.

Affirmed.

1994 WL 593925 (Minn.App.)

END OF DOCUMENT

1994 WL 615049
(Cite as: 1994 WL 615049 (Minn.App.))

Court of Appeals of Minnesota.

Theresa G. HILL, individually and on behalf of
Clinton Hill's Kids for Saving
Earth, Appellant,
William Hill, deceased, Plaintiff,
v.
Mary SCHAFFNER, et al., Respondents.

No. C5-94-960.

Nov. 8, 1994.

Appeal from District Court, Hennepin County; William S. Posten, Judge.

Theresa G. Hill, pro se.

Lewis A. Remele, Kevin P. Hickey, Bassford, Lockhart, Truesdell & Briggs, P.A., Minneapolis, for respondents.

Considered and decided by SCHUMACHER, P.J., and PARKER and FORSBERG, JJ.

UNPUBLISHED OPINION

FORSBERG, Judge.

***1** Appellant Theresa Hill (director) and her husband (originally a party to this case and since deceased) formerly served as directors of a Minnesota non- profit corporation. They brought a legal malpractice action against respondents Mary Schaffner, Patricia Perell, and Jacobson, Harwood, Brill & Bennett, P.A. (attorneys) based on the attorneys' work in forming and organizing the corporation. The director argues the trial court erred in granting the attorneys' summary judgment motion because: (1) she presented sufficient evidence of an attorney-client relationship; (2) she has a valid claim for damages based on Minn.Stat. § 317A.011, subd. 6 (1992); (3) the trial court violated Minn.R.Civ.P. 52.01 by not separately stating its findings of fact or conclusions of law; and (4) the attorneys' counsel made improper statements at the hearing on the motion for summary judgment. In addition, the director presents certain issues for consideration for the first time on appeal. We affirm.

DECISION

Upon review of a grant of summary judgment, we must determine: (1) whether there are any genuine issues of material fact, and (2) whether the trial court erred in its application of the law. *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan,* 494 N.W.2d 261, 265 (Minn.1992); *Wartnick v. Moss & Barnett,* 490 N.W.2d 108, 112 (Minn.1992).

I.

In order to prevail in a legal malpractice case, a plaintiff must establish: (1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff's damages; and (4) that but for defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action. *Wartnick,* 490 N.W.2d at 112; *Blue Water Corp. v. O'Toole,* 336 N.W.2d 279, 281 (Minn.1983); *Spannaus v. Larkin, Hoffman, Daly & Lindgren,* 368 N.W.2d 395, 398 (Minn.App.1985), *pet. for rev. denied* (Minn. Aug. 20, 1985). "Failure of proof on any one element defeats recovery." *Blue Water Corp.,* 336 N.W.2d at 282; *Spannaus,* 368 N.W.2d at 398.

According to the director, she adduced sufficient proof of the existence of an attorney-client relationship, because she "understood that she and her husband were being represented individually"

Asmus Aff.,
Ex. Q

by the attorneys and she performed certain actions "on the basis of assurances" provided to her by the attorneys. On the record before us, however, we cannot say the director offered sufficient proof of the existence of an attorney-client relationship under either the "contract" or the "tort" theory of establishing an attorney-client relationship. *See TJD Dissolution Corp. v. Savoie Supply Co.,* 460 N.W.2d 59, 62 (Minn.App.1990) (discussing two methods of establishing the existence of an attorney-client relationship); *Veit v. Anderson,* 428 N.W.2d 429, 431-32 (Minn.App.1988) (same).

Under the contract theory, an attorney-client relationship exists if the parties explicitly or implicitly agree that the attorney will provide legal services to the client. *Veit,* 428 N.W.2d at 431-32. The opening paragraph of the original letter of retention sent by the attorneys to the director stated that "the firm will provide legal services to the corporation." The letter did not state that the attorneys also would represent the individual interests of the director and her husband. In addition, the record before us includes the following facts: (1) the legal services performed by the attorneys were billed to the corporation; (2) the director and her husband never were billed for any legal services performed by the attorneys; (3) the director and her husband never paid for any legal services performed by the attorneys; and (4) the director and her husband told the attorneys they were represented by their own personal attorney. Viewing all the facts in the light most favorable to the director, they show nothing more than the director's expectation that the attorneys would represent her. As a matter of law, a party's expectation that an attorney will represent him or her, without more, is insufficient to create an attorney-client relationship. *Spannaus,* 368 N.W.2d at 398-99. Thus, the trial court did not err in concluding the director had failed to show the existence of an attorney-client relationship under the contract theory.

***2** Under the tort theory, an attorney-client relationship exists even in the absence of an express contract "whenever a person seeks and receives legal advice from a lawyer under circumstances in which a reasonable person would rely on the advice." *Veit,* 428 N.W.2d at 432 (quoting *Langeland v. Farmers State Bank of Trimont,* 319 N.W.2d 26, 30 (Minn.1982)). The director argues she performed certain actions "on the basis of assurances" provided to her by the attorneys. However, even assuming the law firm gave legal advice to the director and she relied on it to her detriment, no attorney-client relationship could have been formed under the tort theory unless the director's reliance was reasonable. *TJD Dissolution Corp.,* 460 N.W.2d at 62. As described above, the record shows: (1) the attorneys' letter of engagement stated they would provide legal services to the corporation and did not state they would represent the individual interests of the director and her husband; and (2) the director and her husband told the attorneys they had their own personal attorney, even before commencing this malpractice lawsuit against the attorneys. These facts support the trial court's conclusion that any reliance by the director was unreasonable as a matter of law.

Most significantly, the record contains ample evidence of the director's concern that the non-profit corporation would be "taken over" by its corporate sponsors. The director's expressions of concern show she knew her interests differed from those of the non-profit corporation. There can be no attorney- client relationship under the tort theory where the person claiming client status is aware that the attorney already is representing a client known by the person to have interests adverse to the person. *Id.* In this case, as in *TJD Dissolution Corp.,* the attorneys represented a client (the non-profit corporation) that the director knew had interests adverse to hers. In addition, the attorneys' allegiance to the non-profit corporation was obvious to the director. No court can impose a duty of divided loyalty upon a lawyer. *Id.* at 63. For these reasons, the trial court did not err in concluding the director failed to show the existence of an attorney-client relationship under the tort theory.

In her discussion of the issue of attorney-client relationship, the director also suggests the attorneys owed her a duty of care as a non-client third party because she received legal advice from them and acted on it. However, the rule of law in Minnesota is that "an attorney is not liable to a non-client for negligent advice unless the attorney acted with malice or committed fraud or another intentional tort." *Id.* There is no evidence in the record to suggest the attorneys acted with malice or committed fraud or another intentional tort. Accordingly, the trial court's grant of summary judgment in the attorneys' favor was not erroneous.

II.

Another necessary element of the director's malpractice claim is that she show damages. *Wartnick,* 490 N.W.2d at 112. According to the director, Minn.Stat. § 317A.011, subd. 6 (1992) authorizes her to maintain a claim against the attorneys for money damages. The attorneys, on the other hand, argue that, because the definition of a non-profit corporation precludes any pecuniary gain by those involved in it, the director cannot, as a matter of law, establish that she incurred any damages. The attorneys' argument is correct.

***3** The statute the director cites is one of twenty definitions contained in the Minnesota Nonprofit Corporations Act. It provides that a Minnesota non- profit corporation "may not * * * be formed for a purpose involving pecuniary gain to its members," or "pay dividends or other pecuniary remuneration, directly or indirectly, to its members." Minn.Stat. § 317A.011, subd. 6. Thus, by definition, a nonprofit corporation is one in which the members receive no pecuniary remuneration. *See State v. North Star Research & Dev. Inst.,* 294 Minn. 56, 71, 200 N.W.2d 410, 420 (1972) (test for determining whether corporation is nonprofit corporation is whether members receive any pecuniary remuneration).

The definition cited by the director establishes the opposite point from the one she tries to make. The parties do not dispute that the corporation, on whose board the director and her husband once served, is a nonprofit corporation within the meaning of the Act. Because, by definition, a nonprofit corporation is one from which the members receive no pecuniary remuneration, the director cannot legally have expected to receive any form of remuneration as a member of the corporation's board of directors. Accordingly, as a matter of law, the director cannot establish damages, the third element of a prima facie claim of legal malpractice. Thus, the trial court did not err in granting summary judgment in the attorneys' favor and in dismissing the director's malpractice claim against them with prejudice.

III.

The director argues Rule 52 of the Minnesota Rules of Civil Procedure requires a new trial in this case because the trial court failed to state separately its findings of fact or conclusions of law in connection with its grant of summary judgment. This argument is completely unfounded, because Rule 52, by its own terms, does not apply to a grant of summary judgment. Rather, it provides that "[f]indings of fact and conclusions of law are unnecessary on decisions on motions pursuant to Rules 12 or 56 [Summary Judgment]." Minn.R.Civ.P. 52.01. The director's Rule 52 argument lacks merit and no relief is required.

IV.

The director argues this court should set aside the trial court's ruling because the attorneys' counsel made improper statements regarding the director's lack of success in two earlier, related proceedings involving the same parties at the hearing on the summary judgment motion. However, these statements were not improper because they addressed the fourth element of the director's malpractice claim; *i.e.,* whether but for the attorneys' conduct the director would have been successful in the related actions. *See Wartnick,* 490 N.W.2d at 112 (setting forth four elements of legal malpractice claim). Moreover, even assuming these remarks were improper, it was not an abuse of discretion for the trial court to entertain them. *See Sonnesyn v. Hawbaker,* 127 Minn. 15, 21, 148 N.W. 476, 478 (1914) (determination of whether improper argument of counsel was prejudicial rests wholly in trial court's discretion). Thus, no relief is required.

V.

***4** The director also argues that certain issues not considered in connection with the motion for summary judgment should be considered by this court on appeal. However, we may not base our decision on matters outside the record. *Thiele v. Stich,* 425 N.W.2d 580, 582-83 (Minn.1988). For us to consider issues not presented to the trial court would be to exceed our authority. *Flooring Removal, Inc. v. Ryerson,* 447 N.W.2d 429, 430 (Minn.1989). The director fails to show how this case constitutes an exception where a failure to review additional issues would work an injustice or infringe upon a constitutional right. *See Qualle v. County of Beltrami,* 420 N.W.2d 256, 258 (Minn.App.1988) (exception can be made where the interests of justice so require). Accordingly, we decline to consider any issues not raised and

decided at the trial court level.

Affirmed.

1994 WL 615049, 1994 WL 615049 (Minn.App.)

END OF DOCUMENT

1992 WL 166795
(Cite as: 1992 WL 166795 (Minn.App.))

C
Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

Robert W. SELSTAD, Appellant,
v.
CITY OF LORETTO, et al., Defendants,
Loretto Volunteer Fire Department, Respondent.

No. C4-91-2555.

July 21, 1992.

Appeal from District Court, Hennepin County; Charles A. Porter, Jr., Judge.

Van Holston, Burnsville, for appellant.

Thomas D. McCormick, Peterson, Bell, Converse & Jensen, St. Paul, for respondent.

Considered and decided by AMUNDSON, P.J., and PARKER and KALITOWSKI, JJ.

UNPUBLISHED OPINION

AMUNDSON, Judge.

***1** Respondent Loretto Volunteer Fire Department agreed to burn down an old barn on appellant's farm. After the fire department left the scene, a second fire of unknown origin started on appellant's property and destroyed a number of trees. Appellant sued the fire department, alleging negligence and breach of contract, and the trial court granted the fire department summary judgment on both claims. We affirm.

FACTS

At approximately 7 a.m. on June 18, 1992, the fire department arrived at appellant's property. The firefighters set fire to appellant's barn as a training exercise. The fire department left the scene around 10:30 a.m. Prior to leaving, the fire department twice watered the ground in a 100 foot radius around the barn and inspected the property with appellant. Everything was found to be satisfactory during the inspection and the only damage was a couple of scorched trees. The fire chief stated that the fire was only smoldering when the fire department left. Appellant stated he left about five minutes after the fire department.

Later that day, a second fire of unknown origin started on appellant's property, destroying a number of trees. Appellant sued the fire department, alleging negligence and breach of contract. The trial court granted the fire department summary judgment on both claims and this appeal followed.

DECISION

On appeal from summary judgment, the role of the reviewing court is to review the record for the purpose of answering two questions: (1) whether there are any issues of material fact and (2) whether the trial court erred in its application of the law. *Offerdahl v. University of Minn. Hosps. & Clinics,* 426 N.W.2d 425, 427 (Minn.1988). Summary judgment is proper when no material issues of fact exist and one party is entitled to judgment as a matter of law. Minn.R.Civ.P. 56.03. The appellate court conducts an independent review of the record in light of the relevant law to determine if the lower court made the proper legal conclusion. *Jadwin v. Minneapolis Star & Tribune Co.,* 367 N.W.2d 476, 483 (Minn.1985).

I. *Negligence Claim*

The trial court analyzed this case under the principles set forth in *Dahlheimer v. City of Dayton,* 441 N.W.2d 534 (Minn.App.1989), *pet. for rev.*

Asmus Aff.,
Ex. R

denied (Minn. Aug. 15, 1989) and determined the fire department could not be held liable for negligence based on the principles of public policy, the public duty doctrine and the discretionary function exception of the torts liability act, Minn.Stat. § 466.03, subd. 6 (1990). We, however, do not reach these issues. Rather, we hold summary judgment was properly granted for the fire department because there was no causal connection between the fire department's alleged negligence and the second fire.

The basic elements of a negligence claim are (1) duty; (2) breach of that duty; (3) the breach is the proximate cause of plaintiff's injury; and (4) the plaintiff did in fact suffer an injury. *Schweich v. Ziegler, Inc.,* 463 N.W.2d 722, 729 (Minn.1990). Where the evidence is such that the trier of fact can do no more than guess or conjecture as to the cause of the injury, plaintiff has failed to prove defendant's breach caused the injury. *Id.* Circumstantial evidence may justify an inference of negligence. *Id.* However, the circumstantial evidence must be more than simply consistent with plaintiff's theory of causation; reasonable minds must be able to conclude from the circumstances that plaintiff's theory outweighs and preponderates over opposing theories. *Id.* at 730. There must be some credible evidence from which an inference of negligence is permissible. *Kowalske v. Armour & Co.,* 300 Minn. 301, 309, 220 N.W.2d 268, 273 (1974).

***2** In the present case, there is no credible evidence to link the fire department's actions with the second fire. Appellant admits he does not know how the fire started and he presents no evidence to link the second fire to the fire department's actions. Appellant's theory is based on mere conjecture that is insufficient to sustain a negligence action.

We also note that this is not a case of *res ipsa loquitur.* The doctrine of *res ipsa loquitur* provides that a plaintiff must prove three preconditions: (1) ordinarily the injury would not occur in the absence of negligence; (2) the cause of the injury was in defendant's exclusive control; and (3) the injury was not due to plaintiff's conduct. *Hoven v. Rice Memorial Hosp.,* 396 N.W.2d 569, 572 (Minn.1986). Appellant's claim fails on the first two requirements. Fires often start in the absence of negligence, and appellant's property was not in exclusive control of the fire department when the second fire started. Therefore we affirm the grant of summary judgment for the fire department on appellant's negligence claim.

II. *Contract Claim*

The elements of a breach of contract claim are: (1) the formation of a contract; (2) performance by plaintiff of any conditions precedent; and (3) a breach of the contract by defendant. *Industrial Rubber Applicators, Inc. v. Eaton Metal Prods. Co.,* 285 Minn. 511, 513, 171 N.W.2d 728, 731 (Minn.1969). The fire department argues a contract was never formed. We need not, however, answer that question, because even if there was a contract, appellant cannot prove the contract was breached. Just as the causal connection in the negligence action was too remote, the causal connection between the fire department's actions and the injury is too remote to establish a breach. *Cf. Anderson v. Lindgren,* 360 N.W.2d 348, 352 (Minn.App.1984) (directed verdict was properly granted for defendant where no evidence linked defendant to the purported breach). Therefore the trial court properly granted summary judgment for the fire department on appellant's breach of contract claim.

Affirmed.

1992 WL 166795, 1992 WL 166795 (Minn.App.)

END OF DOCUMENT

1992 WL 166795
(Cite as: 1992 WL 166795 (Minn.App.))

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Court of Appeals of Minnesota.

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v.
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Loretto Volunteer Fire Department, Respondent.

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Van Holston, Burnsville, for appellant.

Thomas D. McCormick, Peterson, Bell, Converse & Jensen, St. Paul, for respondent.

Considered and decided by AMUNDSON, P.J., and PARKER and KALITOWSKI, JJ.

UNPUBLISHED OPINION

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DECISION

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Asmus Aff.,
Ex. R

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We also note that this is not a case of *res ipsa loquitur.* The doctrine of *res ipsa loquitur* provides that a plaintiff must prove three preconditions: (1) ordinarily the injury would not occur in the absence of negligence; (2) the cause of the injury was in defendant's exclusive control; and (3) the injury was not due to plaintiff's conduct. *Hoven v. Rice Memorial Hosp.,* 396 N.W.2d 569, 572 (Minn.1986). Appellant's claim fails on the first two requirements. Fires often start in the absence of negligence, and appellant's property was not in exclusive control of the fire department when the second fire started. Therefore we affirm the grant of summary judgment for the fire department on appellant's negligence claim.

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Affirmed.

1992 WL 166795, 1992 WL 166795 (Minn.App.)

END OF DOCUMENT

1997 WL 559744
(Cite as: 1997 WL 559744 (Minn.App.))

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Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

Karen A. BRESSER, guardian ad litem for Nicholas Grant Bruns and Garrett Bruns, minors, Respondent,
v.
MINNESOTA TRUST COMPANY OF AUSTIN, Defendant and Third-Party Plaintiff, Appellant,
v.
Janell Grant BRUNS, individually and as conservator of the estates of Nicholas Grant Bruns and Garrett Anthony Bruns, et al., Third-Party Defendants,
Karl O. Friedrichs, individually and as agent for Defendant, Minnesota Trust Company of Austin, Third-Party Defendant, Respondent.

No. C2-97-140.

Sept. 9, 1997.
Review Denied November 13, 1997

Blue Earth County District Court File No. C2-95-1341

John C. Peterson, Farrish, Johnson & Maschka, 201 N. Broad Street, # 200, P.O. Box 550, Mankato, MN 56002 (for Respondent Bresser)

Richard J. Thomas, Thomas H. Jensen, Burke & Thomas, 3900 Northwoods Drive, Suite 200, Arden Hills, MN 55112 (for Respondent Friedrichs)

Warren F. Plunkett, Peter D. Plunkett, Warren F. Plunkett & Associates, 107 West Oakland Avenue, Post Office Box 463, Austin, MN 55912 (for Appellant)

Considered and decided by KLAPHAKE, Presiding Judge, DAVIES, Judge, and PETERSON , Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

*1 Minnesota Trust Company of Austin (MTC) appeals from judgments dismissing its third-party complaint against respondent Karl O. Friedrichs. Friedrichs has filed a notice of review, challenging the trial court's denial of his motion for bad-faith attorney fees. Respondent Karen A. Bresser, the guardian ad litem for the minor children, also has filed a brief on appeal.

Because the evidence reasonably supports the trial court's finding that Friedrichs was not an agent of MTC and because the trial court did not err in rejecting MTC's other claimed bases for holding Friedrichs liable, we affirm dismissal of MTC's third-party complaint against Friedrichs. Because MTC submitted a false affidavit in opposition to Friedrichs's motion for summary judgment, we reverse the trial court's denial of bad-faith attorney fees and remand for determination of those fees.

FACTS

Friedrichs, an attorney, was retained by Janell Bruns to establish a conservatorship for her two children who had inherited money from a relative. The trial court appointed Bruns conservator and directed that a $40,000 surety bond be filed.

Friedrichs decided to contact MTC because another attorney in his firm, James Manahan, had done business with MTC and had a packet of preexecuted surety bond supplies from MTC in his office. On July 15, 1992, Friedrichs spoke by telephone with Audrey Hurmence, a vice president at MTC. Hurmence instructed Friedrichs to provide

**Asmus Aff.,
Ex. S**

MTC with an executed guarantee agreement, an executed joint control agreement (JCA), a completed bond form, and a bond premium. Hurmence testified that she informed Friedrichs that the JCA had to be filed with the financial institution or bank holding the conservatorship funds, but acknowledged that she did not tell Friedrichs that he personally had to file the JCA with the bank. Friedrichs testified that Hurmence never informed him that he needed to file the JCA with the bank.

The documents were executed and submitted to MTC. The company and agent copies of the bond application were signed "James Manahan, Agent," and listed Friedrichs as the attorney. The JCA was executed by Bruns and her husband. Under its terms, the Brunses agreed to deposit a copy of the document with the bank and agreed that the funds could be withdrawn only upon the Brunses' joint signatures. MTC issued the bond, and Friedrichs filed it with the court and obtained the letters of conservatorship.

Friedrichs provided Bruns with the letters and with copies of the bond, the guarantee agreement, and the JCA. Friedrichs did not instruct Bruns to file the JCA with the bank. Bruns thereafter obtained the funds but never established a conservatorship account. Instead, she and her husband spent the funds.

An order to show cause eventually was issued, ordering Bruns to appear and explain her failure to file annual accountings with the probate registrar. By this time, Friedrichs had withdrawn as her attorney. When Bruns failed to repay the funds as ordered by the court, Bresser was appointed guardian ad litem and commenced an action against MTC to collect on the $40,000 bond. MTC thereafter brought this third-party action against the Brunses and Friedrichs.

***2** Bresser moved for summary judgment against MTC, and the trial court granted her motion. Friedrichs and MTC thereafter brought cross-motions for summary judgment. Friedrichs argued that he had no duty or obligation to MTC to insure that the JCA was sent to the bank and that the failure to file the document with the bank did not cause the loss in this case. MTC argued that Friedrichs was liable for failing to file the JCA with the bank and was negligent in his duties as an agent of MTC. MTC also moved for summary judgment against the Brunses because they failed to answer MTC's third-party complaint and for a stay of the judgment Bresser had obtained against MTC on the bond.

By order dated March 28, 1996, the trial court denied the cross-motions for summary judgment, noting that a fact issue remained as to whether Friedrichs was an agent of MTC. The court granted MTC's motion for summary judgment against the Brunses, but denied its motion for stay of entry of judgment.

A bench trial was held. The court thereafter found that Friedrichs was not an agent of MTC, that Friedrichs had no duty to notify financial institutions of MTC's requirements, and that MTC had established no negligence or other basis for holding Friedrichs liable. The court also denied Friedrichs's motion for bad-faith attorney fees finding that MTC acted in good faith. This appeal followed denial of MTC's new trial motion and entry of final judgment.

DECISION

I.

The existence of an agency relationship presents a question of fact. *Vacura v. Haar's Equip., Inc.*, 364 N.W.2d 387, 391 (Minn.1985). This court will reverse a trial court's factual findings only if clearly erroneous. Minn. R. Civ. P. 52.01.

MTC insists that the following facts prove an agency relationship existed in this case: (1) Friedrichs was a member of a law firm that had MTC's surety bond supplies in its possession so that any firm member could write a bond; (2) Friedrichs had a client in need of a bond; and (3) Friedrichs contacted MTC and was told he could obtain a bond by filling out the bond, obtaining an executed guarantee agreement, completing a joint control agreement (JCA), and paying a bond premium. We disagree. An agency is a fiduciary relationship that results when a principal manifests to an agent that the agent may act on his account, when the agent consents to so act, and when the principal has the right of control over the agent. *Jurek v. Thompson,* 308 Minn. 191, 197, 241 N.W.2d 788, 791-92 (1976) (citing Restatement (Second) of Agency § 1 (1957)). In this case, (1) Friedrichs never consented to enter into an agency relationship with MTC; (2) Friedrichs never provided legal

representation to MTC; (3) MTC never manifested its consent that Friedrichs act as its agent; and (4) MTC did not exercise any control over Friedrichs. At most, MTC communicated to Friedrichs that he would have to fulfill certain requirements before MTC would issue a bond to Friedrichs's client, and any control MTC exercised over Friedrichs terminated once that bond was issued. Under these circumstances, the trial court's finding of non-agency is not clearly erroneous.

***3** Even if Friedrichs was MTC's agent, there is no evidence that he breached any duty toward MTC: the terms of the JCA did not obligate Friedrichs to deposit it with the bank, and Friedrichs and Hurmence both testified that Friedrichs was never asked to personally deposit the JCA with the bank. Nor is there any evidence that filing the JCA with the bank would have prevented MTC's loss: the JCA merely required the signatures of both Bruns and her husband to withdraw funds, and the evidence established that both of the Brunses were responsible for wrongfully withdrawing the funds.

MTC next argues that Friedrichs owed some other duty to MTC. However, Minnesota courts have refused to hold an attorney liable to a nonclient for malpractice. *See, e.g., Schuler v. Meschke,* 435 N.W.2d 156, 162 (Minn.App.1989) (citing *Eustis v. David Agency, Inc.,* 417 N.W.2d 295, 298 (Minn.App.1987)), *review denied* (Minn. Apr. 19, 1989). While an attorney may be liable, under some circumstances, to a nonclient for negligent misrepresentation, one of the requirements for negligent misrepresentation is that the actor supply false information to others. *Cf. Bonhiver v. Graff,* 311 Minn. 111, 122, 248 N.W.2d 291, 298 (Minn.1976) (accountant liability under Restatement § 522). Here, there is absolutely no evidence that Friedrichs ever represented to anyone that he had deposited or would deposit the JCA with the bank.

MTC further argues that the conservatorship bond was "void ab initio" because Friedrichs failed to follow MTC's underwriting conditions when he failed to deposit the JCA with the bank. This argument, however, was not presented to the trial court and cannot be raised for the first time on appeal. *See Thiele v. Stich,* 425 N.W.2d 580, 582 (Minn.1988).

MTC finally argues that the trial court abused its discretion by failing to stay entry of the judgment Bresser obtained against MTC. In its March 28, 1996 order, however, the trial court properly exercised its discretion and concluded a stay was not warranted or necessary because a decision on MTC's claim against Friedrichs would not affect the judgment Bresser had obtained against MTC on the bond. *See* Minn. R. Civ. P. 62.06 (court may stay enforcement of final judgment entered upon some but not all claims presented in an action).

II.

By notice of review, Friedrichs challenges the trial court's denial of his motion for bad-faith attorney fees. We will not reverse a trial court's decision on this issue absent an abuse of discretion. *Uselman v. Uselman,* 464 N.W.2d 130, 140-45 (Minn.1990) (involving sanctions under Minn.Stat. § 549.21, subd. 2 and Minn. R. Civ. P. 11); *Radloff v. First American Nat'l Bank,* 470 N.W.2d 154, 156 (Minn.App.1991), *review denied* (Minn. July 24, 1991).

***4** Friedrichs insists that MTC acted in bad faith because MTC had no objectively reasonable basis for pursuing an action against him, because no evidence supported any of MTC's claims, and because an affidavit filed by MTC in connection with its motion for summary judgment contained "clear falsehoods calculated to mislead" the court. While we cannot conclude that MTC's third- party complaint contains intentional misstatements of fact and legal theory, we can conclude with certainty that the summary judgment affidavit was false and prejudicial.

The summary judgment affidavit, dated February 23, 1996, was submitted by Warren Plunkett, a vice president and chief underwriter for MTC. In that affidavit, Plunkett states that "on or about July 16, 1992, your affiant received a request from Friedrichs * * * to write a surety bond" and that "your affiant" gave Friedrichs the underwriting instructions as a prerequisite to writing the bond. At trial in July 1996, however, Plunkett admitted that he never spoke to Friedrichs regarding the bond. The only person at MTC to actually speak to Friedrichs in July 1992 was Hurmence, who at the time of the summary judgment motion had no memory of her conversation with Friedrichs. It was not until the day of trial in July 1996, when Hurmence heard Friedrichs's voice in the

courthouse, that she remembered having spoken to him in July 1992.

Thus, Plunkett's affidavit contained intentional and false statements in violation of Minn.R.Civ.P. 56.05 (requires affidavits submitted in connection with summary judgment motion to "be made on personal knowledge [and] set forth such facts as would be admissible in evidence."). Plunkett's affidavit also was prejudicial: it was the only affidavit submitted by MTC in connection with the parties' cross-motions for summary judgment, and was crucial to the trial court's decision to deny summary judgment and order a trial on the agency issue.

Under these circumstances, we conclude that the trial court abused its discretion in denying Friedrichs's motion for bad-faith attorney fees. Such a sanction is warranted under Minn.R.Civ.P. 11, Minn.R.Civ.P. 56.07, or Minn.Stat. § 549.21, subd. 1 (1996). We therefore reverse and remand for determination of reasonable fees incurred by Friedrichs from the time of the summary judgment motion through appeal.

Affirmed in part, reversed in part, and remanded.

1997 WL 559744, 1997 WL 559744 (Minn.App.)

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re: Chapter 7 Case

SRC Holding Corporation, F/k/a Miller & Schroeder, Inc. and its subsidiaries, BKY Case Nos. 02-40284 to 02-40286 Jointly Administered

Debtors.

McIntosh County Bank, et al., ADV Case No. 03-4291

Plaintiffs,

v.

Dorsey & Whitney LLP, a Minnesota Limited Liability Partnership,

Defendant.

The Deposition of PAULA RINDELS, taken pursuant to Notice of Taking Deposition, taken before Ann Marie Holland, a Notary Public in and for the County of Washington, State of Minnesota, taken on the 28th day of April, 2004, at 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota, commencing at approximately 10:00 a.m.

APPEARANCES:

EDWARD W. GALE, ESQUIRE, of the Law Firm of LEONARD, O'BRIEN, SPENCER, GALE & SAYRE, 55 East Fifth Street, Suite 800, St. Paul, Minnesota 55101, appeared for and on behalf of the Plaintiffs.

RICHARD G. MARK, ESQUIRE and JASON R. ASMUS, ESQUIRE, of the Law Firm of BRIGGS & MORGAN, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, appeared for and on behalf of the Defendant.

The Original is in the possession of Attorney Edward W. Gale.

* * *

PAULA RINDELS:

PAULA RINDELS,

the Witness in the above-entitled matter after having been first duly sworn deposes and says as follows:

EXAMINATION

BY MR. GALE:

Q. Let's start with your name.

A. Paula Rindels.

Q. And you are an attorney?

A. Yes.

Q. Employed at Dorsey & Whitney?

A. Yes.

Q. In what capacity?

A. Currently I am of counsel.

Q. How long have you been employed with Dorsey?

A. In one capacity or another for about 22 years, almost.

Q. All right. When did you start?

A. June 1982.

Q. And continually since?

A. Yes.

Q. Have you ever held a position other than of counsel?

A. Yes.

Q. You worked on the St. Regis deal in 1998 and 1999, right?

A. Yes.

Q. What position did you hold with Dorsey at that time?

A. I was a partner.

Q. Can you tell me generally how many years you were partner at the Dorsey firm?

A. I became a partner in January of 1990.

Q. And when did you switch to of counsel status?

A. As of September 2002.

Q. Are you licensed to practice in any states other than in Minnesota?

A. No.

Q. Do you specialize your practice in any areas of law?

A. Public finance.

Q. Any other areas?

A. That's -- that's mainly it, public finance.

Q. In the 22 years or so that you have been with Dorsey have you pretty much focused your practice in the public finance area?

A. Pretty much, yes.

Q. In the '98/'99 time frame were you doing Indian

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gaming transactions?
A. I was doing Indian gaming transactions before, yes, as well.
Q. When did you start doing Indian gaming transactions?
A. I don't -- I don't -- well, 19 -- I think 1992.
Q. And did you do them then on a -- I don't want to use the word continual, but is that something that you did at the Dorsey firm from '92 up until 1998 or 1999?
A. Yes.
Q. Do you continue to work on those sorts of transactions?
A. From time to time.
Q. In the 1998/1999 time frame what percentage of your practice would be focused on Indian gaming transactions?
A. I don't really remember.
Q. Would it have comprised a majority of your time?
A. No.
Q. In your practice doing Indian gaming transactions do you represent both tribes and lenders?
A. I have represented both tribes and lenders.
Q. Is that --
MR. MARK: Excuse me, be sure to speak

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up. I am a little old and deaf.
BY MR. GALE:
Q. Was that true also before February of 1999, both tribes and lenders?
A. Yes.
Q. Can you tell me generally what sort of work you did on behalf of tribes in those transactions? Just in general terms, what sort of things you would do on behalf of tribes?
A. I would represent them in structuring the loan transaction. Mostly focusing on aspects that had to do with -- with the loan transaction itself and not necessarily with the gaming aspects, except as possibly they may affect some provision that needed to be included.
Q. And what about the work that you did on behalf of lenders, can you tell me in a general nature the type of work that you did on behalf of lenders?
A. I would draft the loan documents at their request and include the provisions that they wanted me to include.
Q. Now, does your practice include the financing of the construction and operation of Indian casinos?
A. That would sometimes be the reason for the loan.
Q. So that is something that you have done in your

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practice at Dorsey & Whitney?
A. Yes.
Q. Was that something that you had done in your practice at Dorsey & Whitney prior to the St. Regis loans?
A. Yes.
Q. Now, the St. Regis loans, as I understand it, were made to construct an Indian casino for the Mohawk Tribe up in New York; is that right?
A. Yes.
Q. And there were two loans, there was an $8,690,000 construction loan and then a smaller equipment loan in the amount of approximately three and a half million dollars?
A. Yes.
Q. And they were called St. Regis I and St. Regis II?
A. I think that's what Miller & Schroeder called them.
Q. For purposes of today when I ask you about St. Regis, just assume I am talking about St. Regis I and II, unless I tell you differently.
A. Okay.
MR. MARK: The loans? St. Regis loans?
MR. GALE: Yes.
BY MR. GALE:

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Q. As I understand it, this loan was not made to a tribe, but instead to a management company; is that right?
A. That's correct.
Q. And the management company was called President R.C.?
A. Correct.
Q. There was also a management agreement involved in this transaction between President R.C. and the tribe?
A. There was an existing agreement, yes.
Q. And there was also a pledge agreement, as I understand it, between the tribe Miller & Schroeder and President R.C.; is that right?
A. There was a notice and assignment of pledge.
Q. Okay. Now, have you ever done a deal like this before?
A. Specifically like this deal?
Q. Yes.
A. No.
Q. What was unusual about this deal that you hadn't done in prior deals that you had done?
A. Usually Miller & Schroeder was making the loan directly to the tribe, which was the public finance aspect of it.
Q. So this was the first time, at least from your perspective, that the transaction involved a loan to a

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management company rather than to a tribe?
A. That's correct.
Q. Had anyone else at Dorsey ever done a deal where the loan was to the management company rather than to a tribe?
A. I don't know.
Q. What about Mr. Jarboe?
A. I don't know.
Q. Does the structuring and documentation of a loan like that involve specialized skill and knowledge?
MR. MARK: I'm going to object. I am not sure where we are going with this. You know that the deposition is limited to the Dorsey defenses. I was giving you a little bit of room on background, but if you are going to start getting into the merits of whether this was a unique loan and the pledge agreement and the other things, I am going to object and we are not going to go further on that.
MR. GALE: I am not going to get into the specifics of it, but I do think some background is relevant to the issue of the banks' reliance on the legal work that was done, which is part of the gaming issue. I am not going to go far with it, but that is the purpose of my asking it.
I am not sure if I got an answer to my question. Could you read it back.

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(Whereupon the requested portion of the record was read aloud by the Court Reporter.)
A. Probably.
BY MR. GALE:
Q. Well, did you feel that you had the sort of knowledge that was necessary in '98 and '99 to work on a transaction like this?
A. Yes.
Q. In that time frame how many other law firms in the State of Minnesota had the capability of doing that sort of a transaction?
MR. MARK: Objection; no foundation, and again, clearly, how does this have anything to do with the Dorsey defenses? I mean we are going to have to stop this pretty soon, if this is where it is going.
MR. GALE: It goes to the issue of reliance, of whether or not the banks could reasonably rely on the legal work done by Dorsey.
MR. MARK: Let's go off.
(Off the record.)
MR. MARK: That is a fight for another day.
MR. GALE: Are you going to instruct her not to answer?
MR. MARK: Yes. If that is the basis for the question, given the limited scope of discovery that the courts approved, I will instruct her not to answer.

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BY MR. GALE:
Q. Who were your competitors in '98 and '99?
MR. MARK: Same objection. I instruct her not to answer.
Q. Have you in your practice spoken at conferences and seminars in the areas of Indian gaming law?
MR. MARK: Objection; same instruction.
Q. Have you ever appeared or testified before any governmental agency or regulatory body on issues of Indian gaming law?
MR. MARK: Objection; same instruction.
Q. I assume you are going to follow your counsel's instruction and not answer these questions?
A. Yes.
Q. Does Dorsey & Whitney have an Indian Gaming Law Department?
A. Yes.
Q. Did they have a department in '98 and '99?
A. Yes.
Q. What was the name of the department?
A. I don't remember specifically.
Q. How long had the firm had an Indian Gaming Department?

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A. I don't remember specifically.
Q. Had you ever been chair of the department?
A. No.
Q. How many attorneys were practicing in that department in '98 and '99?
A. I have no idea.
Q. More than a dozen, if you know?
A. I don't know.
Q. Do you know whether or not all of the lawyers that were practicing in that department in '98 and '99 were in the Minneapolis office?
A. They were not.
Q. I understand Dorsey has a New York office?
A. That's correct.
Q. And they had a New York office during the time of the St. Regis loans?
A. Yes.
Q. Did any of the lawyers in the New York office do any work on the St. Regis loans?
A. Yes.
Q. Who would that be?
A. I'm sorry, I don't recall their names.
Q. The name of Chris Karns was referred to yesterday. Do you recall Mr. Karns working on this file?
A. I do recall Mr. Karns working on the file.

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Q. He worked out of the New York office?
A. No, he did not.
Q. What office did he work out of?
A. Washington, D.C. I believe.
Q. Let me ask you this, Ms. Rindels, were there any lawyers other than Chris Karns that worked on this case that were not from the Minneapolis office?
A. Would you repeat the question?
MR. MARK: You said case. I think you mean on these loans.
MR. GALE: On the loans, yes.
BY MR. GALE:
Q. Do you want me to repeat the question?
A. Yes, please.
Q. Other than Chris Karns, were there any other non-Minnesota lawyers at Dorsey who worked on these loans?
A. Yes.
Q. What were their names?
A. I don't recall their names.
Q. Do you recall what office?
A. New York.
Q. Have you ever had your deposition taken before?
A. Yes.
Q. How many times?
A. Twice.

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Q. Can you tell me generally the circumstances?
A. The first time was a bond issue in New Mexico where I was representing the purchaser of the bonds and there was a question raised about the validity of the bonds.
The second time I was representing a borrower, which was a hospital in California, and the hospital went bankrupt, and there was a question about whether or not some universal (phonetic) commercial loan statements were correctly filed.
Q. Do any of those matters have anything to do with Indian gaming law?
A. No.
Q. Have you ever had occasion to testify in court before?
A. No.
Q. What did you do to prepare for your deposition here this morning?
A. I spoke with my attorneys and I reviewed documents that they had given me.
Q. Did you speak with anyone other than your attorneys?
A. No.
Q. Have you spoken with anyone other than your attorneys in preparation for your deposition today?

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A. Well, there was Mark Jarboe, our other attorney was present at one of the meetings that we had.
Q. I don't want to know about the conversations you had with your counsel, but have you and Mr. Jarboe ever personally met and discussed preparation for your deposition?
A. No.
Q. What documents did you review?
MR. MARK: Counsel, she just reviewed documents that were produced, but she didn't see anything that hasn't been produced to you. What she saw and what I picked out I think is protected by work product, but I'm assuring you it was nothing other than what has been produced.
Q. When was the Dorsey firm retained to work on the St. Regis loans?
A. I believe it was 1998. Towards the end of the year.
(RINDELS Deposition Exhibit 1 marked for identification.)
BY MR. GALE:
Q. Do you have Exhibit 1 in front of you?
A. Yes.
Q. Can you identify this for me?
A. This appears to be the new matter form which

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was prepared when the file was opened with respect to this loan.
Q. And the date that it says it was opened was December 3, 1998; is that right?
A. Correct.
Q. Does that comport with your memory as to when the file -- around when the file would have been opened?
A. Yes. However, when the file was opened, I wasn't working on it, so I don't have any recollection specifically regarding the file opening.
Q. Had you ever seen this document before?
A. Yes.
Q. When would you have seen it?
A. I would have probably seen it when I saw -- when I was given the file.
Q. All right. This file looks like it was opened up by Mark Jarboe?
A. Correct.
Q. Do you know was he the lawyer that was called to work on this file?
A. That was the information that I was given.
Q. Do you know who retained him?
A. I -- not specifically, no.
Q. Okay. Now, I want to ask you a couple of questions about the files that Dorsey kept for their work on

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St. Regis loans. I assume Dorsey kept a file of your work; is that right?
A. Correct.
Q. And can you explain for me how those files are kept?
Is there a name on the files? What would the name of this file have been when it was opened up in 1998?
A. It would have had the client name and the matter name, which are listed on this form.
Q. The client name would be?
A. Miller & Schroeder Financial, Inc.
Q. And the matter name?
A. President R.C. - St. Regis Management Company.
Q. Where would that file have been kept?
A. It would have been kept by Mark Jarboe when he opened it until such time as he may have given it to me when I started working on it.
Q. When did you start working on it, do you remember?
A. I believe it was late in 1998.
Q. So it would have been sometime in December then?
A. Probably.
Q. So you started working on it fairly soon after the file was opened?

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A. Fairly soon.
Q. By the time this deal closed in February of '99 can you just give me some idea as to how big the file was?
Do you keep them in red-rope files like this or how do you keep them at your firm (indicating)?
A. We keep -- we have a red-rope file, but it varies from attorney to attorney how they handle the paperwork between the time the file is opened and the time the file is closed. And my way of handling it was to either put documents loose in the file folder or to keep them in a pile on my desk.
Q. Let's get back to this file then or the loan. When it closed in February '99 how many red-rope files were there, if you can recall?
A. There was probably only one.
Q. And do you know who had possession of it? Do you know who had possession or control of that file?
A. I don't remember whether it was in my office or in someone else's.
Q. What sort of things were put in that file?
A. Copies of documents that were drafted, copies of letters, copies of e-mails sometimes. Copies of documents received from others in the course of the transaction.
Q. Are personal notes, handwritten notes or memos

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of telephone conversations, et cetera, are those typically put in files?
A. It varies.
Q. What is your practice?
A. Sometimes I put them in and sometimes I don't.
Q. Do you know where that file is now?
A. I do not.
Q. Have you seen the file since the date that this loan closed, since the end of February 1999?
A. Probably.
Q. Do you know who has the file now?
A. No.
Q. What was the practice at Dorsey when a loan would close? Would it be stored in a closed file section of your law firm or stored off site?
A. Eventually, yes.
Q. Do you know what happened with this one?
A. No.
Q. Do you know who would?
A. No.
Q. Do you have a records custodian at your firm, a file clerk that handles closed file matters?
A. I assume so. I just give it to my secretary.
Q. Do you know if that original loan file still exists?

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A. I don't know.
Q. Did Mr. Jarboe have a practice of putting handwritten notes or memos into loan files that you worked on with him?
A. I don't know.
Q. Do you know whether or not Mr. Karns, Chris Karns had a practice of doing that?
A. I don't know.
Q. If Mr. Karns worked on this case out of the Washington, D.C. office would there have been a file that would have been opened and maintained in the Washington, D.C. office also?
A. No.
Q. Where would Mr. Karns keep his notes, records, documents that he would have worked on as far as the St. Regis loans?
A. I have no idea.
Q. Is there a practice at your firm where those lawyers will send them back to Minneapolis to be put in the original loan file?
A. That would happen in most cases, yes.
Q. Do you know whether or not it happened in this case?
A. I don't know.
Q. Do you personally remember keeping any

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handwritten notes, memos, et cetera, with respect to your work on St. Regis?
A. No.
Q. No, you don't recall?
A. I don't remember keeping any.
Q. Do you have a memory of either discarding or throwing away any memos, e-mails, things like that when the loan closed or after the loan closed?
A. Could you repeat the question, please?
Q. Do you have any memory of either throwing away or discarding any personal notes that you may have had with respect to this loan? Any e-mails or other miscellaneous documents aside from the actual loan documents?
A. I do not have a memory of discarding anything.
Q. Had you ever personally done any work for Miller & Schroeder before the St. Regis loans in February of 1999?
A. Yes.
Q. What type of work had you done for Miller & Schroeder?
A. I represented Miller & Schroeder with respect to loans to tribes for various purposes.
Q. Were they Indian gaming loans?
A. Some of them had a connection with gaming, not all.

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Q. How many had a connection with gaming before St. Regis?
A. I -- maybe ten possibly.
Q. How many deals did you work on for Miller & Schroeder before St. Regis, both gaming and non-gaming, Indian loans?
A. 10 to 15.
MR. MARK: How many? I'm sorry.
A. 10 to 15.
Q. Total?
A. Total.
Q. Right. I understand. It is not -- it is just a best guess.
A. Okay.
Q. Is that right?
A. Uh-huh. Yes.
Q. That is a yes?
A. Correct.
Q. Did other lawyers at Dorsey & Whitney also do work for Miller & Schroeder, Indian gaming loans?
A. Yes.
Q. Before I get into those loans, what was the time frame that you worked on Miller & Schroeder gaming loans prior to February of '99? In other words, when did you start doing work for them?

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A. I believe around 1995.
Q. Did all of the Indian games loans that you worked on for Miller & Schroeder prior to St. Regis, were all of those sold off by Miller & Schroeder in participations?
A. I don't know.
Q. What other attorneys had done legal work for Miller & Schroeder before St. Regis?
A. Legal work with respect to what?
Q. Well, any type of legal work? They were a client of Dorsey & Whitney, right?
A. Miller & Schroeder was a client and had been a client for many years.
Q. So were there lawyers other than yourself at Dorsey & Whitney that did work for Miller & Schroeder?
A. Yes.
Q. And can you tell me generally the nature of the work that they did for Miller & Schroeder? Was it -- were there other lawyers that did Indian gaming work?
A. There were other lawyers that did Indian gaming work. There were other lawyers that had done public finance transactions with Miller & Schroeder.
Q. How many Indian gaming loans had Dorsey & Whitney worked on for Miller & Schroeder before St. Regis?
A. I don't know.

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Q. Do you know whether or not each of those loans would have been sold by Miller & Schroeder in participations?
MR. MARK: Asked and answered.
A. No.
(RINDELS Deposition Exhibit 2 marked for identification.)
BY MR. GALE:
Q. Do you have Exhibit 2 in front of you?
A. Yes.
Q. Have you ever seen this before?
A. No.
Q. If you would look at the Page, the Bates number at the bottom is MS 100215. Near the end.
A. (Reviewing.)
Q. Do you have that in front of you?
A. Yes.
Q. There is a list of gaming transactions as of January 5, 1999. Do you see that?
A. Yes.
Q. Do you have memory -- well, let's do this. If you would for me, if you would just take a look at this list and tell me which ones you recall Dorsey & Whitney working on?
A. Working on in any capacity?

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Q. Yes.
A. I could tell you that the PBS Financial Corporation and Siletz, Lac Vieux Desert Band, Yavapai-Apache Nation, Lake of the Torches, were all transactions that we worked on at least one transaction for, but not necessarily all of the ones that were referred to here.
Q. Did the firm work on the Prairie Meadows Racetrack and Casino?
A. I don't know.
Q. If you look on the next page the list goes on.
A. I worked on a transaction for Coquille and I worked on a transaction for -- no, that's it on this page.
Q. Let's go to the next page.
A. I worked on a transaction for Prairie Island and Lac Courte Oreilles and Leech Lake.
Q. Did you work on the Trump Indiana Casino?
A. No, I did not.
Q. Did you work on the Greater Dubuque Riverboat matter?
A. No, I did not.
Q. What about the next page?
A. I did not work on any of these.
Q. Do you know whether Dorsey did?
A. I don't know.

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Q. You don't recall working on the Iowa tribe?
A. I did not work on that. Well, no, I didn't.
Q. Did anybody else at your firm work on it?
A. I don't know.
Q. What about the next page?
A. I know we did work for Las Vegas Paiute. I don't believe we did it on behalf of Miller & Schroeder.
I don't -- I did not work on any other of these transactions.
Q. What about the next page?
A. I did not work on any of these.
Q. Did Dorsey do any work on the Gaming Ventures, Limited Partnership one?
A. I don't know.
Q. What about the Kansas Gaming Company?
A. I don't know.
Q. You personally didn't recall doing any work on either of those matters?
A. I did not.
Q. What about the final page?
A. I did not work on any of these.
Q. In your representation to Miller & Schroeder over the years did you become familiar with their business plan on originating loans and then selling them off in participations?

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A. No.
Q. Did you understand in 1998 and 1999 when you were doing work for Miller & Schroeder that they would act as originator of loans?
A. Yes.
Q. Did you understand that their Indian gaming loans were structured so that they would be sold off in loan participations?
A. I understood that they would be participating the loans, yes.
Q. Did you understand that Miller & Schroeder's plan was to sell off all of the loans and then act as servicer of the loans?
A. I understood that they acted as servicer. And I understood they participated the loans, but not necessarily that it would be 100 percent.
Q. Okay. Did you understand that Miller & Schroeder would typically prepare a loan marketing book that would be given to prospective purchasers of the loan?
A. I understood that they would be preparing a marketing book.
Q. Did you understand that a participation agreement would typically be included as part of the marketing book?
A. I did not know that the participation agreement

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was part of the marketing book.
Q. Did you have an understanding as to if it wasn't 100 percent, that Miller & Schroeder would sell, was there a certain percentage that Miller & Schroeder would want to get a commitment for before they would close the loan?
A. I don't -- I have no idea about that.
Q. In any of the deals that you worked on for Miller & Schroeder prior to St. Regis did you ever have any discussions with anyone at Miller & Schroeder about Miller & Schroeder's business plan in terms of what percentage of the loan they would want to have sold before they would commit to fund the loan to the borrower?
A. No.
Q. Did you have an understanding that after the loan to the borrower closed, that a closing book would be compiled and then sent to the participants?
A. I knew that a closing book would be prepared.
Q. Was that something that based on your experience would be done very soon after the closing, within a day or two of the closing?
A. I don't know.
Q. Were there ever instances on any loans that you worked on where there was some urgency given in terms of getting the closing book put together so that it could be

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sent quickly to the participants?
A. I don't recall.
Q. Did you have any understanding as to Miller & Schroeder's plan was to try to have the participants fund the loan within a week after Miller & Schroeder funded the loan to the borrower?
A. I don't know.
Q. Which attorneys at Dorsey & Whitney were involved in the St. Regis loan?
A. I was involved and Mark Jarboe was involved. And I remember that we had asked questions of Chris Karns, and so he was involved. And there were several lawyers in the New York office that we asked a specific question of, but I don't recall their names.
Q. Can you tell me in general terms what your responsibilities were on this loan? What sorts of tasks did you perform?
A. I drafted the loan documents on behalf of Miller & Schroeder and participated in helping them put together the necessary pieces of the transaction as between Miller & Schroeder and the borrower and tangentially also the tribe itself.
That's a summary.
Q. What do you recall Mr. Jarboe's tasks being in St. Regis?

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A. He did not -- after the initial conversations and involvement that he had when we were first retained, he was available on an as-needed basis and that's about it.
Q. What about Chris Karns, what do you recall him doing on this loan?
A. I recall asking him questions regarding the National Indian Gaming Commission and -- and licensing of Miller & Schroeder with respect to New York law.
Q. And what about the others? You said there were several lawyers in New York that you asked a question of. Can you tell me what you recall about that?
A. All I recall at the moment is that it had to do with a question of New York law that we were investigating at the request of Miller & Schroeder.
Q. Any other lawyers that you can recall from Dorsey & Whitney that did work on the St. Regis loans?
A. I think there was someone else in Washington, D.C. who was also involved tangentially in the question regarding the National Indian Gaming Commission: Jenny Boylan.
Q. Would it be fair to say that of all of the Dorsey lawyers that worked on the file, you probably did more work than the rest?
A. Yes.
Q. Could you give me any benchmark at all in terms

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of let's say you were going to allocate the labor among 100 percent, what percent of the work would you have done as opposed to Mr. Jarboe or Mr. Karns?
A. 90 percent.
Q. To you?
A. To me, correct.
Q. And the rest would be allocated among the rest of the lawyers?
A. Yes.
Q. Okay. Now, I understand that Dorsey billed $50,000 for the work in closing these loans; is that right?
A. That sounds right.
Q. Do you recall the fees being paid by the borrower?
A. I recall billing Miller & Schroeder. I don't recall what their arrangements were regarding payment.
Q. As you sit here today, do you recall the borrower paying Miller & Schroeder's legal fees at closing from the loan proceeds? I'm sorry, paying Dorsey & Whitney's legal fees?
A. I don't recall.
Q. Was that a typical scenario of the deals that you worked on for Miller & Schroeder, where the lender's counsel's legal fees would be paid by the borrower at closing?

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A. Yes.
Q. So, if they were in fact paid by the borrower at closing, that wouldn't have been unusual or unique, at least from your perspective?
A. Correct.
Q. Did the lawyers that worked on this case at Dorsey & Whitney keep itemized time records of the work that they did?
A. Yes.
Q. Can you explain to me what type of time records would have been kept on a file like this? I mean how do you keep your time records? Name, item, amount, work that you did on it?
A. Description.
Q. Why don't you tell me?
A. Well, when you enter your time for each day, you would put the client, the matter, the number of hours worked and a description of the work that you had done that day.
Q. Were those types of time records kept with respect to the work done on the St. Regis loans?
A. Yes.
Q. Do you know whether or not they were provided to Miller & Schroeder along with the billings?
A. They were not.

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Q. Okay. Do you know why they were not?
A. Because we were billing them a flat fee and that was not something that they required.
Q. Did you participate in negotiating that fee?
A. I participated in negotiating I believe the second part of the fee, but I don't believe the first part of the fee.
Q. Now, when you talk about the first part of the fee, what are you referencing?
A. I am referencing the original eight plus million dollar loan that was first contemplated.
Q. You had nothing to do with the discussion of the fee on that part of it?
A. I don't think so.
Q. And on the second part of the loan, the approximately 3.5 million dollar loan, you did have something to do with that?
A. I had something to do with it, yes.
Q. Tell me what you had to do with it.
A. I don't recall specifically how it was -- how the fee was determined.
Q. Do you recall the fees for St. Regis; one being 35,000 and St. Regis, two, being 15,000?
A. Yes.
(RINDELS Deposition Exhibit 3 marked for

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identification.)
BY MR. GALE:
Q. Do you have Exhibit 3 in front of you?
A. Yes.
Q. Can you identify this for me?
A. This is the letter and invoice that we sent to Miller & Schroeder after the closing of this loan.
Q. You don't know whether this was paid at closing or not or who paid it?
A. I don't recall.
Q. Now, there are some time records at the back of this exhibit. Starting with Bates Number 502450. Do you see that?
A. Yes.
Q. I just happened to come across these here very recently. Had you ever seen this before?
A. Yes.
Q. What is this?
A. (Reviewing.) This is the Proforma statement that we received from our billing people before we send the bill.
Q. So this is a compilation of the itemized time records that were kept by lawyers that worked on the St. Regis file?
A. Yes.

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Q. Did you review this in preparation for your deposition?
A. I -- I did review it recently.
Q. When did you review it?
A. Monday of this week.
Q. Why did you review it --
A. Excuse me?
Q. -- this last Monday?
A. Yes.
Q. Monday of this week?
A. Yes.
Q. Why did you review it?
A. To refresh my memory as to what happened in this transaction.
Q. Other than these time records and the records that you reviewed that Mr. Mark identified earlier in this deposition, are there any other documents that you looked at to refresh your memory in preparation for your deposition here today?
A. Yes.
Q. What else did you look at?
A. I looked at the complaint with the exhibits and --
MR. MARK: At something that I gave you. That is something that I gave you.

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THE WITNESS: Right.
MR. MARK: He is asking for something outside of what I gave you. If I understand his question.
THE WITNESS: Oh.
A. Nothing outside of what my attorney gave me.
Q. So other than -- did your attorney give you this exhibit, the time record?
A. I believe that we generated -- yes, my attorney gave it to me. I think we also generated it internally, but at the same time.
Q. As I was looking through this exhibit last night, I saw that it ends, the last date entry on it is February 16, 1999.
Do you see that? It is on Page 502455?
A. Okay.
Q. Do you see that?
A. Yes.
Q. Okay. This deal closed February 24, 1999, right?
A. Correct.
Q. Do we have time records for the remaining eight days?
A. Yes.
Q. Do you know where those are?
A. Yes.

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Q. Did you review those in preparation for today?
A. Yes.
MR. GALE: Counsel, for the record, I would ask that all of the itemized billings that Dorsey did on this file be produced.
MR. MARK: These aren't itemized billings. These are time records. I think you attached them to billings, these statements. But I don't have a problem, but these are not billing statements.
MR. GALE: Well, they are time records.
MR. MARK: Time records.
MR. GALE: I would ask that they be produced.
BY MR. GALE:
Q. Now, do these time records based on your recollection of this work accurately reflect the work that was done by Dorsey & Whitney?
A. Yes.
Q. Was this itemization ever sent to Miller & Schroeder at any time?
A. I don't know if it was ever sent at any time. I know it was not sent as part of the bill.
Q. Other than these records which are called a Proforma statement, as I think you indicated, are there any other records that would reflect work that was done by

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Dorsey & Whitney on the St. Regis loans prior to closing?
A. No.
Q. So it would be these Proforma records and then the Proforma records from February 16th into the future?
A. Correct.
Q. Nothing else as far as you know?
A. Correct.
MR. GALE: why don't we just take a five-minute break.
(Off the record.)
MR. MARK: Mr. Gale, am I correct as to Exhibit 3, you have attached the document that has "Proforma" on the top of it and Bates Number 502450 through 502458?
MR. GALE: That is true. They had not been produced by Dorsey.
MR. MARK: Do you know how you got these?
MR. GALE: They were in a Miller & Schroeder file.
MR. MARK: Okay.
(Off the record.)
BY MR. GALE:
Q. Now, in the St. Regis loans, Dorsey & Whitney was lender's counsel, right?
A. We were Miller & Schroeder's counsel.

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Q. You were identified in the documents as lender's counsel?
MR. MARK: Do you want to show her the documents you are referring to, please?
MR. GALE: I will, but first I wanted to ask her the question.
Q. You were identified in the documents as being lender's counsel?
MR. MARK: Objection; no foundation.
A. In what document?
(RINDELS Deposition Exhibit 4 marked for identification.)
BY MR. GALE:
Q. Let me just say that these are select pages taken from the closing book for St. Regis I.
A. Okay.
Q. And the entire Bates range of this document is GEN 1029 through 1587. I didn't want to copy 500 pages, so I just copied three or four of them.
A. Okay.
Q. Actually, it is pages 1029 through 1033.
A. Uh-huh.
Q. Okay? Now, just a couple of things on this. Number 1, if you would look at Page 1032.
A. Okay.

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Q. It has lender's counsel and then identified as Paula Rindels, Dorsey & Whitney?
A. Yes.
Q. That's you, right?
A. That's what it says. Yes.
Q. Now, if you would look at the first Page, 1030 and 1031.
A. Okay.
Q. Can you tell me from this closing list what documents you would have prepared?
A. I would have prepared the loan agreement, the promissory note, the escrow agreement, the notice and acknowledgment of pledge, the closing certificate, but not the exhibits to the closing certificate. I would have prepared a draft of the opinion of counsel to the borrower. I would have prepared the UCC financing statement with respect to pledged revenues. I prepared the notice of escrow agent.
Q. Were there any other documents on the closing list that may have been prepared by lawyers at Dorsey other than yourself?
A. I may have also prepared the certificate of no hazardous waste. But in answer to your question, no.
Q. So Mr. Jarboe, Karns or others did not draft any of the other closing documents?

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A. They may have provided comments, but I did the primary drafting.

(RINDELS Deposition Exhibit 5 marked for identification.)

BY MR. GALE:

Q. Ms. Rindels, this is the closing book for St. Regis II. Again, just select pages from it. The Bates range of the entire document is GEN 1588 through 2145.

Again, if you would look at the distribution list on Page 1591. Again, it identifies lender's counsel, Paula Rindels, Dorsey & Whitney, true?

A. Yes.

Q. And again, with respect to the closing list in this document, would this be the same -- well, why don't you tell me from this closing list what documents you had prepared with respect to St. Regis II?

A. The same documents as with respect to St. Regis I.

Q. Okay. Now, Miller & Schroeder was identified as the placement agent; is that true?

MR. MARK: Excuse me. In Exhibits 4 and 5?

MR. GALE: No.

A. In what?

Q. In the St. Regis loans? Miller & Schroeder was

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identified as the placement agent for the St. Regis loans?

MR. MARK: What you just gave her shows them as the lender.

MR. GALE: I'm moving off of that exhibit now, Rick.

MR. MARK: Okay.

A. Identified in what and to whom?

Q. Do you recall any documents that you reviewed where Miller & Schroeder was identified as the placement agent for the St. Regis loans?

A. No.

(RINDELS Deposition Exhibit 6 marked for identification.)

BY MR. GALE:

Q. I am showing you what has been marked as Exhibit 6, which is the marketing book for St. Regis I. Again, it is selected pages from the document.

A. Okay.

Q. The Bates range of the entire document is GEN 001 through 506.

If you would like at the second page of the exhibit, it identifies as placement agent, and then it says, "Miller & Schroeder Investments Corp., Miller & Schroeder or placement agent." Do you see that?

A. Yes.

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Q. Have you ever seen this document before?

A. (Reviewing.)

Q. When I say, "the document," I am talking about the entire marketing book for St. Regis I?

A. No.

Q. You never saw the marketing book for St. Regis I?

A. No.

Q. Did you ever see parts of the marketing book for St. Regis I?

A. Yes.

Q. Did you see the salient data section of the marketing book for St. Regis I?

A. Yes.

Q. So would it be fair to say then that you had seen Miller & Schroeder identified as the placement agent in the salient data section in this exhibit?

A. I don't remember that, but yes, I have seen salient data and I see now that that is what it says.

(RINDELS Deposition Exhibit 7 marked for identification.)

BY MR. GALE:

Q. Exhibit 7, Ms. Rindels, is again select pages from the marketing book for St. Regis II. The entire Bates range for this document is GEN 0507 through 1028.

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If you would look at the second page of this exhibit. This has again Miller & Schroeder Investments Corp. as identified as the placement agency, true?

A. True.

Q. Okay. Had you seen the salient data section of the St. Regis II marketing book?

A. I believe so.

Q. Looking at this document, does this refresh your memory that you did recognize Miller & Schroeder as being the placement agent for St. Regis I and II?

MR. MARK: That she recognized?

MR. GALE: Yes.

MR. MARK: And not the document?

Q. If you could just answer the question?

MR. GALE: Why don't you read back the question to her.

(Whereupon the requested portion of the record was read aloud by the Court Reporter.)

A. Yes.

(RINDELS Deposition Exhibit 8 marked for identification.)

BY MR. GALE:

Q. Exhibit 8 -- well, can you identify this for me? What is this?

A. (Reviewing.) This is the -- I don't remember

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what they usually call this letter, but it was sort of a commitment letter, but it wasn't really a commitment that they would give to borrowers, and this was the one for the St. Regis transaction.

Q. Let me start with some specifics. The first page of this exhibit is a fax cover sheet from Patty Fredericks to you; is that right?

A. Correct.

Q. And it is dated February 3, 1999?

A. It is.

Q. And it attaches a copy of the loan placement agreement; is that right?

A. I suppose you could call it an agreement.

Q. Well, it is entitled in the re: section?

A. Yes. Oh, it does say, "loan placement agreement," well, it says, "regarding the loan placement agreement," but it is a letter.

Q. Okay. In any event, on the second page of this exhibit, Page 502531, Miller & Schroeder is again identified as the placement agent; is that right?

A. That's correct.

Q. Okay. When you got this letter on February 3, 1999 did you have occasion to read it?

A. I believe so.

Q. Now, what discussions did you have with Miller

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& Schroeder about the bank participants prior to closing the loan in February of '99?

A. None.

Q. You never discussed the issue of bank participants with Miller & Schroeder prior to closing?

A. No.

Q. Did you know that Miller & Schroeder intended to sell the St. Regis loan to bank participants?

A. I know they intended to participate the loan.

Q. If you would look again at Exhibit 8. Is it still in front of you?

A. Yes.

Q. If you would look on Page 502536. Where it says, there is a section under, "General terms and conditions," it is called, "Commitments to borrower"?

A. Yes.

Q. Do you see that?

A. Yes.

Q. It says, "Placement agent shall provide borrower with an irrevocable commitment hereinafter referred to as the senior subordinated loan commitment to close and fund the senior subordinated loan at the time the placement agent satisfactorily completes all due diligence associated with the underwriting of the senior subordinated loan, determined by the placement agent in its sole discretion,

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and placement agent has received signed commitments to participate letters from all other senior subordinated loan participants to purchase," or I'm sorry, "for purchase of 100 percent of the senior subordinated loan."

Were you aware after your review of this document that Miller & Schroeder would be committed to provide an irrevocable commitment to President once they completed due diligence and after they had received commitments from participants to purchase 100 percent of the loan?

A. I probably read this paragraph, but it wasn't something that I ever focused on as being part of what I was doing in the transaction.

Q. In the transactions that you would handle prior to St. Regis, had there been loan placement agreements similar to this that you had received copies of for your review?

A. There were usually letters to borrowers where Miller & Schroeder agreed subject to certain conditions to make a loan.

Q. Were the conditions that are included in Exhibit 8 standard or typical conditions that Miller & Schroeder would have in either their commitment letters or letters to borrowers as you just referred to?

A. I don't recall whether this type of provision

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was usually in their letters.

(RINDELS Deposition Exhibit 9 marked for identification.)

BY MR. GALE:

Q. Do you have Exhibit 9 in front of you?

A. Yes.

Q. This again is the first page of the exhibit is a facsimile cover sheet from Patty Fredericks to you; is that right?

A. Correct.

Q. Dated January 14, 1999?

A. Yes.

Q. And it encloses the salient data section of the loan marketing book for the St. Regis I loan, right?

A. Yes.

Q. Now, in the first page of the salient data section, it is Page 501979?

A. Yes.

Q. Do you have that?

A. Yes.

Q. There is a reference again to Miller & Schroeder being the placement agent; is that right?

A. That's correct.

Q. And there is also a reference below that to a section that says, "Note rate/participant interest rate,"

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right?
A. Correct.
Q. What did you understand that to mean?
A. I understood that that was the interest rate that the financing would bear.
Q. Did you understand that to be the interest rate that would be paid to the participants?
A. Yes.
Q. Now, do you know why this exhibit was sent to you on January 14, 1999?
A. For my review.
Q. Did you review it?
A. Yes.
Q. Did you make comments to it?
A. Yes.
Q. Is that handwriting that is on this exhibit your handwriting?
A. Yes.
Q. So that would be your handwriting -- well, let me just ask it this way. Is all of the handwriting on this exhibit your handwriting? At least the part that is part of the salient data section?
A. Yes.
(RINDELS Deposition Exhibit 10 marked for identification.)

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BY MR. GALE:
Q. Can you identify Exhibit 10 for me, please?
A. (Reviewing.) I don't recall Exhibit 10.
Q. Do you have any memory at all about it?
A. I remember the discussion of the issues that appear to be contained in Exhibit 10. But I -- I have no recollection at the moment of having seen this actual document.
Q. Let me ask it this way. Is this a memorandum that you prepared?
A. No.
Q. Do you know who would have prepared this?
A. No.
Q. Do you know why your name is on it?
A. No.
Q. Do you know whether it was prepared by one of your colleagues at the Dorsey law firm?
A. I would suspect it would be since it has -- since it identifies me as the Minneapolis office and since the numbers at the top of the page are the file numbers for this file.
Q. Right. But now in looking at this, this does not refresh your memory as something you would have prepared?
A. I did not prepare this.

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Q. All right.
(RINDELS Deposition Exhibits 11 and 12 marked for identification.)
BY MR. GALE:
Q. Just take a minute, if you would, and look at both of those exhibits. I am going to ask you a couple of questions on them.
A. (Reviewing.) Okay.
Q. Exhibit 11 appears to be a letter from you to Walter Horn dated February 18, 1999, true?
A. Correct.
Q. And can you tell me why you would have sent this to Mr. Horn on February 18, 1999?
A. I would have sent it to him in preparation for a closing to receive execution or executed copies of the various loan documents.
Q. And to the best of your knowledge you did enclose those documents and sent them to Mr. Horn via Federal Express on February 18, 1999?
A. Yes.
Q. Look if you would on the next exhibit, Exhibit 12.
A. Okay.
Q. This appears to be a letter from Mr. Horn dated the next day, February 19th, but it is addressed to Patty

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Fredericks at Miller & Schroeder?
A. Yes.
Q. And it references in that first paragraph there, "Enclosed are the following documents in the order of requested documentation listed in your correspondence dated February 18, 1999."
Do you know, Ms. Rindels, if this was a response of Mr. Horn to your letter of the previous day?
A. It doesn't appear to be.
Q. Okay. Have you ever seen Exhibit 12?
A. I don't believe that I have.
(RINDELS Deposition Exhibit 13 marked for identification.)
BY MR. GALE:
Q. Do you have Exhibit 13 in front of you?
A. I do.
Q. I received these files or these were pulled from some documents that I was able to go through earlier this week over here at this law firm.
The handwriting on this document, do you know whose that is?
A. I don't.
MR. MARK: You want her to go through each page?
MR. GALE: No.

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Q. I just want to know if any of the handwriting on this is --

MR. MARK: That's why I think you should look at each page, if you are asking for all of it.

A. (Reviewing.)

Q. Let me ask you a question: Is any of the handwriting on this exhibit yours?

A. No.

Q. Do you have any idea whose handwriting it is?

A. I don't.

Q. Have you ever seen this document before?

A. Before today?

Q. Before right now, yes?

A. No. Yes.

Q. Okay. When would you have seen it?

A. It was e-mailed to me.

Q. When was it e-mailed to you?

A. This week.

Q. By whom or from whom?

A. My attorney.

Q. If you would look at the second page of the exhibit. It is actually the back of the first page.

A. Okay.

Q. It is designated D, as in Defendant, 00027.

This appears to be a memo from Patty Fredericks

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to the sales department dated February 18, 1999.

Did you ever receive a copy of this memo?

A. I don't recall having ever received a copy of this.

Q. Do you recall discussing the items that are in this memo with Patty Fredericks at any time before it went out?

A. I remember the topics that are some of the topics, anyway, that are covered in this memo.

Q. Do you recall around the third week of February, February 18th, 20th, 22nd and 24th that there were activities going on with respect to this loan where there were attempts to get participants to sign-off on the fact that NIGC approval had not yet been obtained for certain things?

A. I might have. I don't remember.

Q. You don't have any recollection of any, for lack of a better word, scrambling at the end to get things out to participants to have them sign-off before the deal closed with the borrower?

A. I don't remember.

Q. Do you know if anyone else at the Dorsey firm was involved in those sorts of things with Miller & Schroeder?

A. I don't know.

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(RINDELS Deposition Exhibit 14 marked for identification.)

BY MR. GALE:

Q. Again, this appears to be a memo from Todd Hendrickson to all St. Regis I and II participants dated February 23, 1999, which would have been one day before closing.

Did you ever get a copy of this?

A. No.

Q. Did you ever have occasion to discuss this with anyone before it went out?

A. I don't believe so.

Q. Were you aware that some of the banks had committed to buy participation interests in this loan before the loan closed on February 24, 1999?

A. No.

Q. Did you ever discuss the issue with Miller & Schroeder as to what percentage of commitments they had received from bank participants prior to closing with the borrower?

A. Not that I recall.

Q. Do you recall you or anyone within your law firm either having discussions or making reference or records with respect to what participants had agreed to buy participation with certain NIGC approvals not being

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obtained?

A. No.

Q. That was nothing that you participated in?

A. No, it was not.

Q. To the best of your knowledge, did anyone else at Dorsey participate in that?

A. No.

Q. Now, what work did you do in the drafting of the participation interests for the St. Regis loans?

MR. MARK: The participation agreement?

MR. GALE: Yes. Thank you.

A. I don't recall it. I don't recall doing anything with respect to the participation agreement.

BY MR. GALE:

Q. Okay. Do you recall any other lawyers at Dorsey doing any work with respect to the participation agreements for the St. Regis I and II loans?

A. I don't recall. No.

Q. There was some testimony yesterday about there being an issue with respect to some licensing requirements of the New York Racing and Wagering Board.

Do you recall or do you have any memory about that?

A. I recall that one of the issues that Miller & Schroeder or Mary Jo Brenden asked us to look at were what

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requirements Miller & Schroeder might have to satisfy in New York in order to -- in order to do what it normally does with respect to this loan.

Q. Who looked into that issue at Dorsey & Whitney?

A. I believe it was Chris Karns.

Q. Do you recall Chris Karns discussing with you things that needed to be done with respect to the licensing issue?

A. I don't recall any specific discussions.

Q. Do you recall any revisions or changes to the participation agreement to incorporate the advice that Mr. Karns was giving?

A. I don't recall being involved in that at all. Either knowing it was -- either knowing the specifics that were going on or being aware or looking at any of the actual language that was proposed.

Q. Did you recall that the participation agreements were in fact revised to include language about the New York licensing issues with the Racing Commission prior to their being signed by the participants?

A. At the time I didn't. I mean I have been made aware of that now, but I had no recollection -- I mean I don't -- I wasn't involved in it at the time.

Q. Other than Chris Karns, are you aware of any other lawyer at Dorsey & Whitney that would have

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participated in those discussions about the licensing issues in New York and any changes, if any, that would have been made to the participation agreement in response to that?

A. Possibly Mark Jarboe.

Q. Now, in your representation of Miller & Schroeder over the years have you had occasion to look at their participation agreements that they used?

A. I have been aware of the participation agreement. But other than looking at certain paragraphs in it that Mary Jo Brenden may have directed my attention to in connection with a particular transaction, I -- I don't have a working knowledge of the agreement.

Q. Do you recall ever specifically working on a participation agreement issue for Miller & Schroeder?

A. Any issue connected with any participation agreement?

Q. Yes. With the drafting or what should or should not be included in their template or form participation agreement?

A. No.

Q. Do you know anybody within the Dorsey firm that would have participated in that?

A. I don't know.

Q. Did you have knowledge in 1988 and '89 that the participation agreement that Miller & Schroeder enters into

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with the participants says that Miller & Schroeder is the nominal payee on the loan?

MR. MARK: Excuse me, I think you mean '98 and '99?

MR. GALE: What did I say?

MR. MARK: '88 and '89.

MR. GALE: That's exactly what I meant. Thank you. Why don't I rephrase the question.

BY MR. GALE:

Q. Did you have knowledge in '98 and '99 that the participation agreement said that Miller & Schroeder was the nominal payee of the loan?

A. No.

Q. Did you know that the participation agreement provided that Miller & Schroeder act as agent on behalf of the participating banks?

A. I know that there is some servicing type language in there. The specific words, I did not focus on.

Q. Did you have any knowledge at all that Miller & Schroeder was acting as agent on behalf of the participating banks that language like that was included in the participation agreement?

A. I don't recall.

Q. Did you understand that if the loans went into default, that it was the bank participants that would have

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the risk of loss?

A. I understood that as far as Miller & Schroeder did not retain part of the transaction and participated out 100 percent, that the bank participants would have the loss.

Q. I'm not sure that answered my question.

If a bank participant purchased ten percent of the loan and the loan went into default, the risk of loss for that ten percent would be with the participant; is that right?

A. That's correct.

Q. Okay. And you understood that in 1998 and 1999?

A. Yes.

Q. And that would be true if there was a problem with the collateral on a loan not being secured or whatever problem there was, that if there was a loss occasion as a result of that, that that loss would rest with the participant, right?

A. Yes.

Q. Prior to February of '99 had any, to your knowledge, had any of the Miller & Schroeder gaming loans gone into default?

A. I have no idea.

Q. Had you personally ever worked on any matters

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for Miller & Schroeder after one of their loans had gone into default?
A. I don't believe so.
Q. In this particular transaction, St. Regis, once it went into default, one or two of your litigators got involved and started representing the interests of Miller & Schroeder and the banks, against the borrower, do you have memory of that?
MR. MARK: I'm going to object to your mischaracterization of who Dorsey represented. If you have an understanding, you can answer.
(Off the record.)
Q. You understand that in this instance your law firm was hired to do some litigation after the default?
A. Yes.
Q. Had your litigation department ever been hired on any other matters prior to St. Regis where Miller & Schroeder went into default and your law firm was hired to do litigation on that?
A. I don't know.
(RINDELS Deposition Exhibit 15 marked for identification.)
MR. GALE: It is Bates stamped D 00094 through 99.
BY MR. GALE:

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Q. I am showing you what has been marked as Exhibit 15. Can you identify this, please?
A. It is an internally generated by Dorsey & Whitney Proforma statement as of June 30, 1999.
Q. And this document, again, is similar to Exhibit 3, or at least the proforma that is attached to Exhibit 3, right?
A. Exhibit 3? (Reviewing.)
Q. All I am asking is it is a similar document?
A. Yes.
Q. Okay.
A. It is a similar document.
Q. And this Exhibit 15, the timekeeper dates appear to be starting at February 1, 1999 and continuing on through June 29, 1999, correct?
A. Yes.
Q. Is this a document that you reviewed in preparation for today?
A. I may have. I -- I don't know for sure. It appears to be different than what I was -- I may have.
Q. Beginning on the third page of this exhibit, the time entry of March 1, 1999. There is a status that says, "The status changes from B," which I assume is -- well, what does "B" mean?
A. I think that refers to the type of billing.

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Q. It changes from "B" to "BNV," "N" as in Nancy. What does "BNV" mean?
A. I don't know.
Q. And it has there that there is no amount of time. Do you see that?
A. I see that.
Q. Or no dollar amount?
MR. MARK: There is no bill value?
A. There is no bill value, correct.
Q. Do you know why that beginning on March 1, 1999 there was no bill value for the rest of this exhibit?
A. I don't know for sure.
Q. Based on your experience with Dorsey & Whitney what do you think it could be?
A. I suspect that the proforma statement available at the time the bill was issued only went through a certain date and in order internally to not bill the client for what had already been billed, that it was changed to do the write off against the time that was already billed.
Q. All right.
Now, I just want to be sure in my own mind what documents you have reviewed say in the last month or two dealing with St. Regis.
And you reviewed all of the documents that Mr. Mark had as exhibits yesterday in the deposition,

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right?
MR. MARK: Well, I can't say that. I don't know that I gave her the same ones.
MR. GALE: I thought that's what she said.
MR. MARK: No, I said she reviewed documents that we produced to you.
MR. GALE: Oh, but that were not in the -- that were not used in the deposition yesterday.
MR. MARK: I don't know that the ones that I used yesterday -- I mean I didn't show her all of the documents that were produced. Some of them had nothing to do with her, as far as I could tell.
Do you see what I'm saying? If I had one that I thought Mary Jo Brenden -- we can show her the exhibits from yesterday. They are here and you can ask her whether she reviewed them, but I just can't say for sure that I gave her the same ones as I used in the deposition.
MR. GALE: Well, documents that you reviewed were what your colleague made available to me earlier on Monday?
MR. MARK: Right.
MR. GALE: Are you telling me that she didn't review any documents that were not part of what I reviewed?

MR. MARK: That's right. Other than those time records.
MR. GALE: Okay.
MR. GALE: That is all I have. Thank you.
MR. MARK: Let's just take a five-minute break. I may have a question or two.
MR. GALE: Of your own witness?
MR. MARK: Yes.
(Off the record.)
MR. MARK: I have a couple of questions.

EXAMINATION

BY MR. MARK:

Q. Would you take a look at Exhibit 6, which Mr. Gale put in front of you before.
A. Yes.
Q. Mr. Gale referred to the second page, GEN 0005 and the reference to placement agent. Do you see that?
A. Yes.
Q. That Miller & Schroeder Investments was identified as the placement agent?
A. Yes.
Q. Would you also turn to the same exhibit, turn

to Page GEN 0491, which is a third page of a draft participation agreement.
A. Okay.
Q. Am I correct, Miller & Schroeder Investments Corp. was also identified as the lender?
A. Yes.
Q. To the best of your knowledge did Miller & Schroeder act as a lender in connection with this transaction?
MR. GALE: Object to the form of the question.
BY MR. MARK:
Q. You can answer.
A. Yes.
Q. Did it have more than one role as far as you know in connection with this transaction?
A. Yes.
MR. GALE: Object to the form of the question.
Q. And what were those roles?
A. It was as between it and the borrower. It was the lender of -- it was the lender of money for a loan. And with respect to the participants under this participation agreement, well, with respect to -- with respect to the participants, it was -- it was placing pieces of the loan

with those participants. It was finding investors.
Q. Now, would you also turn to Exhibit 4. Again. Turn to the Bates number GEN 1032.
A. Okay.
Q. The distribution lists. Am I correct that Miller & Schroeder Investments Corp. is identified as the lender?
A. Yes.
Q. And Dorsey & Whitney was identified as lender's counsel?
A. Yes.
Q. Is that a correct identification?
A. That's correct.
Q. Am I correct that Miller & Schroeder was your client in connection with this transaction?
A. That's correct.
Q. Did Miller & Schroeder ever ask you or Dorsey & Whitney to the best of your knowledge to represent any potential or future participants as clients of Dorsey in connection with this transaction?
MR. GALE: Object to the form of the question.
A. They did not.
Q. Am I correct, if I understood your testimony, please correct me if I'm wrong, you did not have a single

conversation with any participant or future or possible participant prior to the closing and funding of the loan?
A. I did not.
Q. Do you know of anybody at Dorsey who had a direct conversation of any kind with any potential or existing participant for these two loans prior to the closing?
MR. GALE: Object to the form of the question.
A. No.
Q. Did Miller & Schroeder ever suggest to you that in connection with these two loans that the participants were the intended beneficiary of the legal services being provided by Dorsey and Dorsey in some fashion should protect the participants' interests?
A. No.
MR. MARK: I don't have any other questions.
MR. GALE: I don't have anything else. Thank you.
MR. MARK: We will read and sign.

(Whereupon, at 11:45 a.m., April 28, 2004, the foregoing proceeding was terminated.)

(UPON COMPLETION, forward this original Reading and Signing Certificate to Attorney Edward W. Gale, who already has the Sealed Original.)

PAULA RINDELS

I, PAULA RINDELS, do hereby certify that I have read the foregoing transcript of my Deposition and believe the same to be true and correct (or, except as follows, noting the page and the line number of the change or addition desired and the reason why):

Page	Line	Change or Addition	Reason

_____

Dated this _____ day of _____, 2004.

AMH

STATE OF MINNESOTA)
) SS.
COUNTY OF WASHINGTON)

Be it known that I took the Deposition of PAULA RINDELS on the 28th day of April, 2004, at the Law Firm of Briggs & Morgan, 2200 IDS Center, Minneapolis, Minnesota;

That I was then and there a Notary Public in and for the County of Washington, State of Minnesota, and that by virtue thereof, I was duly authorized to administer an oath;

That the witness before testifying was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in Stenotype by myself and transcribed into typewriting under my direction, and that the deposition is a true record of the testimony given by the witness to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

That the cost of the original transcript has been charged to the party noticing the deposition unless otherwise agreed upon by Counsel, and that copies have been made available to all parties at the same cost, unless otherwise agreed upon by Counsel;

That the reading and signing of the deposition by the witness was executed as evidenced by the preceding page;

WITNESS MY HAND AND SEAL this 11th day of May, 2004.

Ann M. Holland
Court Reporter

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:	Chapter 7 Case
SRC Holding Corporation, F/k/a Miller & Schroeder, Inc. and its subsidiaries,	BKY Case Nos. 02-40284 to 02-40286 Jointly Administered
Debtors.	
McIntosh County Bank, et al.,	ADV Case No. 03-4291
Plaintiffs,	
v.	
Dorsey & Whitney LLP, a Minnesota Limited Liability Partnership,	
Defendant.	

The Deposition of MARK A. JARBOE, taken pursuant to Notice of Taking Deposition, taken before Ann Marie Holland, a Notary Public in and for the County of Washington, State of Minnesota, taken on the 28th day of April, 2004, at 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota, commencing at approximately 2:00 p.m.

APPEARANCES:

EDWARD W. GALE, ESQUIRE, of the Law Firm of LEONARD, O'BRIEN, SPENCER, GALE & SAYRE, 55 East Fifth Street, Suite 800, St. Paul, Minnesota 55101, appeared for and on behalf of the Plaintiffs.

RICHARD G. MARK, ESQUIRE and JASON R. ASMUS, ESQUIRE, of the Law Firm of BRIGGS & MORGAN, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, appeared for and on behalf of the Defendant.

The Original is in the possession of Attorney Edward W. Gale.

* * *

MARK A. JARBOE,
the Witness in the above-entitled matter after having been first duly sworn deposes and says as follows:

EXAMINATION

BY MR. GALE:

Q. Why don't we start with your name?
A. Mark Jarboe.
Q. How do you spell your last name, Mr. Jarboe?
A. J-A-R-B-O-E.
Q. You are a partner at Dorsey & Whitney?
A. That's correct.
Q. How long have you been employed at that firm?
A. Since 1976.
Q. You have worked there continually since that time?
A. Yes.
Q. Are you licensed to practice in any states other than in Minnesota?
A. No.
Q. Do you specialize your practice in Indian and gaming law?
A. Presently, yes.

Q. How long have you done that?
A. I have been working on Indian matters for 20 years.
Q. When did you start getting involved in Indian gaming matters?
A. Probably in 1987.
Q. Have you been working in Indian gaming matters since approximately 1987 through the present?
A. With -- it has been a growing part of my practice. About the last ten years I have been working in Indian related matters nearly exclusively. Some of it relates to gaming and some of it doesn't.
Q. Would it be fair to say that in your practice you represent both tribes and lenders?
A. That is correct.
Q. And how long have you been representing both tribes and lenders?
A. We have been representing tribes for 20 years. Lenders, does your question mean lenders to tribes or lenders in general?
Q. Lenders to tribes?
A. Probably about ten years.
Q. Does your practice include doing financing transactions for the construction and operation of Indian gaming casinos?

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A. Yes.
Q. Had you been doing that sort of thing before the St. Regis loans closed in February of 1999?
A. Yes.
Q. Just by way of a little background here, so we can make the record clear.
The St. Regis loans were made to construct an Indian casino for the Mohawk Tribe up in New York; is that right?
A. They were made to a management company for the management company to finance the construction of a casino to be owned by the St. Regis Mohawk Tribe, correct.
Q. There were two loans, one about 8.6 million and one about 3.5 million?
A. There were two loans. I don't remember the dollar amounts.
Q. Both of those loans closed to the best of your memory at the end of February 1999?
A. To the best of my recollection.
Q. This was not a loan to a tribe, but as you said, instead it was a loan to a management company?
A. Correct.
Q. And there was a management agreement then in place between the tribe and the management company?
A. That's my understanding, correct.

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Q. And there was also a pledge agreement or a notice and assignment of pledge agreement that was entered into between the tribe and Miller & Schroeder and the management company?
A. As part of the structure of the transaction, that's correct.
Q. All right. Now, had you personally, Mr. Jarboe, ever done any deals like this before?
MR. MARK: Do you want to explain that?
Q. Yes. Where there was a loan to a management company rather than the tribe, where there was a management agreement between the borrower and the tribe and where there was a pledge agreement of the type that was involved in the St. Regis transaction.
Had you ever been involved in a transaction like that before?
A. That had those three elements?
Q. Yes.
A. No.
Q. Had any of your colleagues at Dorsey & Whitney been involved in a transaction like that before?
A. Not to my knowledge.
Q. Dorsey & Whitney, as I understand it, has an Indian Gaming Law Department and had one also in the late 1990's, true?

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A. Correct.
Q. How long have they had an Indian Gaming Department?
A. 1994 I believe is when we created it.
Q. What is the name of it?
A. Indian and Gaming Department.
Q. Indian and Gaming?
A. Uh-huh.
Q. Is that a yes?
A. Yes. I'm sorry, yes.
Q. Has it always had that name?
A. Yes.
Q. Well, have you ever been the chair of that department?
A. I have been the only -- I am and I have been the only chair of that department.
Q. Can you tell me just generally what is involved in being the chair of that department?
A. A lot of administrative --
MR. MARK: Say it nicely.
Q. You are on the record here. Don't sugarcoat it.
A. Being the chair of a department at Dorsey primarily involves administrative tasks, such as supervising work flow, making sure people get their time sheets in,

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following up on bills. Being the one that management comes to when they want to criticize the performance of a group.
You are all nodding. Let the record show that the other attorneys are all nodding.
Q. How many attorneys were working in the Indian and Gaming Department in '98 and '99, approximately?
A. Approximately seven or eight.
Q. Were all of those attorneys practicing out of the Minneapolis office?
A. No.
Q. You have a New York office and also a Washington, D.C. office; is that right?
A. That is correct.
Q. And you also had those in '98 and '99?
A. Correct.
Q. Were there Indian gaming lawyers in those offices in the late 1990's?
A. In Washington, D.C., but not in New York.
Q. Who was it in Washington, D.C.?
A. Virginia Boylan, B-O-Y-L-A-N, Christopher Karns, K-A-R-N-S.
Who else would have been there? It could be that Philip Baker-Shenk, B-A-K-E-R, hyphen, S-H-E-N-K, but I don't recall when he joined. It was about that time.
Q. Did any of the lawyers in the Washington, D.C.

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office work on the St. Regis matter?
A. Yes.
Q. Which ones?
A. Virginia Boylan and Christopher Karns.
Q. Have you ever had the pleasure of having your deposition taken before?
A. Yes.
Q. How many times?
A. Two or three.
Q. Could you tell me generally the circumstances under which you were deposed?
A. A witness in various matters.
Q. Matters dealing with Indian gaming, Indian and/or gaming issues?
A. Yes.
Q. How many have been involved with Indian gaming issues?
A. All of them; two or three.
Q. Tell me generally what the nature of your involvement was in those cases where you were deposed.
A. One involved a wrongful termination lawsuit of the head of the Wisconsin Gaming Enforcement Division, whatever it was called at the time. One involved -- probably the other two I mentioned, there were two involved litigation against our firm.

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Q. Against your firm by a client?
A. Yes in one case and no in another.
Q. Okay. What was the nature of the subject matter, I guess, of your testimony in those depositions?
A. I don't understand the question.
Q. Well, what were you called to testify about in those litigation matters that were brought against your law firm?
What piece of the puzzle did you fit?
A. In one case internal administrative matters within the firm, responsibility for clients or how work gets delegated. And the other matter is relating to the facts that were -- that gave rise to the lawsuit.
Q. Do you have copies of those transcripts?
A. No.
Q. Have you ever had occasion to testify in court before?
A. No.
Q. What did you do to prepare for your deposition here today?
A. I met with Mr. Mark and Mr. Asmus and one of their other colleagues and that I reviewed certain materials that they provided to me.
Q. What documents did you review?
MR. MARK: Again, I will just tell you

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again, it was the documents other than the time records which you now have that we produced to you. There were no other documents when we met that he went over.
A. That is correct.
Q. Okay. Have you spoken with anyone or met with anyone other than your lawyers to prepare for your deposition?
A. I was in a meeting with my lawyers and with Paula Rindels.
Q. Have you ever had any conversations with Ms. Rindels without counsel where you have discussed the subject matter of this litigation?
A. No.
Q. Have you ever had any discussion with anyone else at Dorsey & Whitney where you discussed the subject matter of the St. Regis loans?
A. Yes.
Q. I'm not -- I don't mean to focus on discussions that you may have had internally about this lawsuit and things that were going on with the lawsuit, but more in terms of in preparation of your deposition to refresh your memory about what would have happened or what did happen in '98, '99 with respect to the closing of the St. Regis loans?
A. No.

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Q. Okay. When was your law firm retained to work on the St. Regis loans?
A. Late 1998. Probably November.
Q. Look, if you would, at Exhibit 1. It should be in your stack there. Could you identify this for me?
A. This appears to be a photocopy of our standard new matter form within Dorsey & Whitney in use at the time.
Q. It looks like the date that the file was opened was December 3, 1998?
A. That's what it says.
Q. Does that comport with your memory about the time that you were retained to work on this matter?
A. Well, that date is a date in which our records center declares the file open. I signed it on -- the date next to my signature is November 23rd.
Q. Were you the lawyer that was retained to work on the file?
A. Miller & Schroeder retained the firm. I was the person whom they contacted initially.
Q. And you think that was sometime in November of 1998?
A. Uh-huh. I would expect it would have been just shortly before I filled out this form.
Q. Now, I want to ask you a few questions about the files that you keep with respect to when you do deals,

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transactions like St. Regis?
A. Uh-huh.
Q. Do you typically, if you are the originating attorney or the attorney that is initially contacted on a case, would you be the one that would be responsible for keeping the file on this?
A. Not necessarily.
Q. Do you know who was responsible for keeping the file on the St. Regis loans?
A. Paula Rindels.
Q. Do you know where that file was kept during 1998 and 1999?
A. I do not know.
Q. Is it the practice of your firm that if lawyers work on the file, it be kept in their office until it is closed, and then it would be sent to the file room and put in closed files or something like that?
A. That is a fair generalization, yes.
Q. Do you know what happened with this file after it closed?
A. No.
Q. Have you made a search to determine whether or not this file still exists?
A. Yes.
Q. When did you make that search or that inquiry?

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A. Sometime over the last month or two.
Q. What did you find?
A. That our file on this matter consists of two-and-a-half dozen file folders, including the materials that were generated in connection with the loan, plus materials relating to the enforcement litigation brought against President R.C.
Q. Does it also include documents related to the lawsuit that was brought by Bremer?
A. I do not believe so. I believe those were in a separate file.
Q. Does the file as it existed in its form when it was closed in 1999 still exist in that form?
A. I don't know how it existed in 1999.
Q. Do you know if any documents that were in the file in 1998 or 1999 were either destroyed or discarded in some fashion?
A. I have no knowledge.
Q. Was it your practice to keep handwritten notes, memorandums, et cetera, of telephone conversations and put them in a file?
A. No.
Q. It is not your practice, it is just typically not your practice when you do things?
A. No. In extraordinary circumstances, if there

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is something extremely unusual or important, yes, but otherwise no.
Q. Was that true also in '98 and '99?
A. Yes.
Q. Do you know whether or not Paula Rindels had a practice or policy of keeping handwritten notes or memos with respect to telephone conversations, et cetera?
A. I do not.
Q. What about Chris Karns?
A. I do not.
Q. Okay. Chris Karns at the time this loan closed was working out of the Washington office, right?
A. Correct.
Q. And he was doing some work on the file as I understand it?
A. Correct.
Q. How would the documents that he generated in Washington get -- well, where would those documents be that he generated or worked on out in Washington?
Would they be in your office in Washington or would they have been sent back to Minneapolis?
A. I couldn't answer with respect to the specific matter. I could respond in terms of general practice, but not with respect to this specific matter. I don't know.
Q. What is the general practice?

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A. That after the closing of a matter all of the attorneys who had file materials on it generally send those to the attorney principally in charge of the matter, who then finalizes whatever permanent file record there is going to be.
Q. Have you made inquiry of Chris Karns as to what he did with any documents that he may have generated?
A. Yes.
Q. And what response did you get?
A. That he has sent all documents that he had on this matter to us here in Minneapolis.
Q. And when did he send them?
A. I don't remember.
Q. Has it been done within the last year?
A. It was either done in connection with the enforcement litigation against President or it was done at the time of the commencement of this action that we are involved in today.
Q. Now, had you personally done legal work for Miller & Schroeder before the St. Regis loans?
A. I don't recall if I had.
Q. Do you think this was the first loan that you had been retained on by Miller & Schroeder?
A. I don't recall whether this was the first loan. Again, the firm would have been retained, not me,

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but I don't recall if this was the first one that came in through me or not.
Q. Do you know how it was that the file came in through you?
A. No. I got a call from Steve Erickson, whom I have known since the mid-1970's.
Q. And what did Mr. Erickson tell you?
A. That he wanted to meet with me and with a consultant, David Larson, to discuss a potential financing for at the St. Regis.
Q. And to the best of your memory was that the first time you had ever been called by Mr. Erickson to do any work on behalf of Miller & Schroeder?
A. I don't recall whether this was the first time or not.
Q. You know Mary Jo Brenden?
A. Yes.
Q. Mary Jo Brenden testified, I think, yesterday that in the 1992/1993 time frame she worked on a case where you were on the other side, and that subsequent to that transaction that Miller & Schroeder began retaining you to do work for them in the '93/'94 time frame.
Does that jog your memory at all with respect to timing?
A. No.

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Q. Had other lawyers at the Dorsey Law Firm done Indian gaming loans for Miller & Schroeder before February of '99?
A. I believe Paula Rindels had.
Q. Anyone else?
A. I wouldn't know. I don't know.
Q. In your, I guess, responsibilities as a chair of this department when new matters come in with respect to Indian gaming loans, do you participate in assigning those matters out to lawyers within the department to work on?
A. If -- if matters come to me, I make a decision as to who I would like to have work on it, either within the department or outside of the department, yes.
Q. And if matters come to other lawyers in the department, they would handle those matters without necessarily bringing it to you to assign to either that lawyer or to another lawyer?
A. Correct.
Q. And that was true in 1998/1999?
A. Correct.
Q. Do you know, Mr. Jarboe, how many Indian gaming loans that Dorsey & Whitney had worked on with Miller & Schroeder before the St. Regis loan?
A. I do not.
Q. Would you just take a quick look at Exhibit 2.

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MR. MARK: I put them in order.
THE WITNESS: Thank you.
Q. Do you have two in front of you?
A. Yes.
Q. Have you seen this exhibit before?
A. I don't believe so.
Q. Did you have a chance over the noon hour or at any time to look through this?
A. I have not seen this -- I had not seen this before I arrived here.
Q. If you would look on the page that is Bates numbered 100215.
A. Yes.
Q. This is a list of Miller & Schroeder gaming transactions as of January 5, 1999?
A. Uh-huh.
Q. This is a three- or four-page list of transactions included in this document.
If you would, I would just ask you to take a minute and look through this and let us know which transactions, if any, you can recall Dorsey & Whitney working on on behalf of Miller & Schroeder?
A. (Reviewing.)
I did not work for Miller -- I do not recall working for Miller & Schroeder on any of these. I was

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involved as counsel to other parties in some of these; just a few. A number of them are borrowers that are familiar to me and that I suspect, but don't know that Dorsey & Whitney worked on primarily through Paula Rindels. But which ones, I couldn't tell you.
Q. All right. Other than Paula Rindels and yourself, were there any other lawyers at Dorsey & Whitney that would have done Indian gaming work for Miller & Schroeder prior to the St. Regis loans?
A. I do not know of any, but I -- there is no reason that I would know that.
Q. In your capacity as chair of the department you wouldn't necessarily know how many deals you had been doing for a particular client?
A. Not all of these transactions would come through my department.
Q. Those were not all Indian gaming loans?
A. They -- they probably were, but that doesn't mean they would come through me. I don't know how it is at your firm, but administratively how we devise things internally doesn't necessarily match up with how a client comes in.
Q. I'm not sure I understand what you are saying then.
If an Indian gaming loan came in to me, rest

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assured I wouldn't be handling it, I would get it to people that do that sort of work. Isn't that the way it works at Dorsey?

A. Yes. Paula Rindels is not in my department.

Q. In 1998 and 1999?

A. No.

Q. Was she working in the Indian and Gaming Department?

A. No.

Q. She was working in the Public Finance Department?

A. Correct.

Q. So, are you saying that the transactions that Paula Rindels worked on for Miller & Schroeder prior to St. Regis would have been matters that would have been handled by the Public Finance Department as opposed to the Indian and Gaming Department?

A. They would -- to the extent Paula worked on them, if they came in to Paula, then they would have been in the Public Finance Department.

Q. So as far as the Indian and Gaming Department is concerned, to the best of your knowledge this could have been the first matter, St. Regis could have been the first matter that came in and was handled by the Indian and Gaming Department?

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A. It could have been the first matter that came in to me, that's correct.

Q. Okay. Now, when the St. Regis loan came in to you did you understand that Miller & Schroeder's business plan with respect to Indian gaming loans was to act as an originator of the loan in that the loan would be structured such that it would be sold off to participants?

A. I understood that Miller & Schroeder would be the lender on the loan and would sell some or all of the loan to participants.

Q. And do you know whether or not Miller & Schroeder's plan was to sell 100 percent of the loans to participants?

A. My understanding was that sometimes they retained some and sometimes they didn't.

Q. Did you become aware that Miller & Schroeder would prepare a loan marketing book that would be given to potential participants?

A. I don't -- I probably was. It was not a document that we saw or participated in.

Q. I am asking you generally now, with respect to the way that Miller & Schroeder conducted its business regarding Indian gaming transactions?

A. I don't know if I knew that at the time.

Q. Is that something that you learned during your

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course of representing Miller & Schroeder in the St. Regis loans?

A. Likely not.

Q. Did you learn in your representation of Miller & Schroeder in the St. Regis loans that they would act as servicer of the loans on behalf of the participants?

A. I may have, but it is not -- whether I learned that, I don't know.

Q. Were you aware that the marketing books that would be prepared by Miller & Schroeder on their Indian gaming loans would include a template or a form participation agreement?

A. I don't know that. I don't believe that I was aware of that.

Q. Did you become aware of the fact that Miller & Schroeder would typically want there to be a commitment from participants to purchase 100 percent of the loan before the loan would be closed with the borrower?

A. I was not aware of that.

Q. You are still not aware of that?

A. I don't know if that is the case.

Q. Okay. Were you aware that participants would be contacted prior to closing, when I say closing, I mean closing with the borrower, and that participants often times would commit to buy a part of the loan even before the loan

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would close with the borrower?

A. I don't know what the practice is.

Q. As you sit here today, you still don't know what the practice is?

A. As I sit here today, I have learned more in the last five years to what the practice is.

Q. Well, when did you learn that that was their practice?

A. I don't know if that is their practice. I know that they contact participants. They attempt to sell participation interests in these loans. When the participants commit, I don't know.

Q. Did you know that they -- that Miller & Schroeder tries to get commitments from participants before Miller & Schroeder funds the loan with the borrower?

A. I have learned that subsequent to this transaction.

Q. When did you learn that?

A. Oh, maybe two years ago.

Q. What were the circumstances under which you learned that?

A. A transaction in which I was representing Miller & Schroeder and they alerted me that they may not be able to close because they hadn't lined up sufficient participants to enable them to close.

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Q. And that was the first time that you heard that was an issue?
A. That was when I learned the details of it, yes.
Q. With respect to your work on the St. Regis loans, were you aware of there being contacts between Miller & Schroeder and various participants in the week or two before the St. Regis loan closed about issues about NIGC approval on related matters?
A. I don't believe so, no.
Q. Who was the lead attorney at Dorsey that handled the St. Regis loan?
A. Paula Rindels.
Q. And Paula Rindels did work on the file, yourself, you did some work on the file, and also Chris Karns did some work on the file, true?
A. That is correct.
Q. How is it that Paula Rindels came to be the lead attorney on this matter?
A. I asked her if she would be willing to take the matter on and she accepted it.
Q. Is there a reason why you didn't handle it?
A. I don't recall the specifics. Workload would probably be an issue. Paula was more familiar with Miller & Schroeder than I was.

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Q. To the best of your knowledge had Paula Rindels ever worked on a matter that had the same components as we discussed that were involved in the St. Regis loan?
MR. MARK: Maybe you should get the record clear so we know what components we are talking about. I think we know, but the record should be clear.
Q. A loan to a management company, as opposed to a tribe, a management agreement and a notice and assignment of pledge agreement?
A. To the best of my knowledge, no.
Q. Had any of the lawyers at Dorsey in the Indian and Gaming Department ever worked on a loan that had those components?
A. Not to my knowledge.
Q. Had any lawyers in the Public Finance Department at Dorsey ever handled a loan that had those components?
A. Not to my knowledge.
Q. Would there be any other lawyers at Dorsey in '98/'99 that would have handled a matter that had those components?
A. Not to my knowledge.
Q. Dorsey billed and was paid legal fees of $50,000 to handle this transaction, true?
A. I don't recall what the amount was.

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Q. Do you know who paid the fees?
A. I -- Miller & Schroeder.
Q. Are you guessing?
A. I'm guessing.
Q. Okay. Was it common for lender's counsel to be paid legal fees by the borrower at closing?
A. It is common for lenders -- for a lender to charge the borrower, to be reimbursed by the borrower for legal fees. In essence, past -- economically pass the fees through to the borrower.
Q. Are you aware of in this case of whether the borrower paid Dorsey's legal fees at closing from the loan proceeds?
A. I don't know that of my own knowledge.
Q. Well, who negotiated the fee with Miller & Schroeder?
A. I don't know. The normal course, it would have been Paula Rindels.
Q. Do you have any recollection of discussing legal fees with Miller & Schroeder on the St. Regis loan?
A. I have no recollection of it.
Q. Who would have made a determination -- I was told earlier today that it was a flat fee; $35,000 for St. Regis I and $15,000 for St. Regis II?
A. Uh-huh. Yes. Okay.

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Q. Does that comport with your memory?
A. I don't know what the numbers are. Flat fees are customary with Miller & Schroeder.
Q. Customary with respect to lending transactions?
A. With Miller & Schroeder.
Q. On lending transactions?
A. Yes.
Q. And to the best of your knowledge it would have been Paula Rindels that would have negotiated the fee with Miller & Schroeder?
A. Correct.
Q. Do you recall having any discussions with Steve Erickson about fees?
A. I do not recall any such discussions.
Q. Do you recall having any discussion with Mary Jo Brenden about fees?
A. No.
Q. Do you recall having any discussions with anybody at Miller & Schroeder about fees?
A. No.
Q. Do you recall having any discussions with anybody within Dorsey & Whitney about the fees that were going to be charged for handling this transaction?
A. No.
Q. Did you consult with Paula Rindels about the

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fees that would be charged on this transaction in light of the fact that neither you nor she had handled a similar transaction?

A. No.

Q. Do you know whether any other law firms in the Twin Cities had handled a similar transaction?

A. I have no way of knowing.

Q. Do you know whether or not any other law firms in the Twin Cities have the capability of doing that sort of transaction in 1998 and 1999?

A. I have no way of knowing. We are not the only lawyers for Miller & Schroeder.

Q. That is not what I asked.

A. No, but I have no way of knowing.

Q. Who are your competitors for Indian and gaming law in the late 1990's?

MR. MARK: I let you go quite a ways here. This has nothing to do with the Dorsey circumstances, so I am going to instruct you not to answer.

Q. Look, if you would, Mr. Jarboe, to Exhibits 3 and 15.

A. I have them here.

Q. Let's start with Exhibit 3. This is a letter from Paula Rindels to Patti Fredericks that encloses two invoices, the 35,000 and 15,000.

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Did you have anything to do with these going out or any of the billing on this file?

A. I would have authorized them to go out. I was the billing lawyer. As such, my signature, or I had to approve these, but beyond that, no.

Q. Attached to Exhibit 3 is a number of pages entitled, "Proforma statement."

A. Uh-huh.

Q. Can you explain to me what this is?

A. This is a photocopy of the -- the document that the attorney receives from our accounting department that indicates all of the time entries charged to a particular file and that.

Q. And do these time records reflect work that was done on the St. Regis loans?

A. They are for this matter, Miller & Schroeder, President R.C., yes.

Q. Do you know, Mr. Jarboe, whether or not there would have been any time records that would have been kept that would have been included on a statement other than this proforma?

In other words, would there be another bill or another file of time spent on the St. Regis loans that would be billed to?

MR. MARK: Before you answer, I just want to clarify that I believe you attached the proforma statement to the first portion of Exhibit 3, but in fact, the document that went to Miller & Schroeder did not have the proforma statement attached. Just so the record is clear.

Go ahead, if you can remember what he asked you.

A. I would not expect to see any time on the matter anywhere else other than here (indicating).

Q. Okay. This to the best of your knowledge is a standard, typical statement that would be generated, billing type statement that would be generated by Dorsey & Whitney?

A. By our accounting department for internal use, correct.

Q. Do you know whether or not these time records were ever sent to Miller & Schroeder along with the statements for the bill?

A. I have no knowledge.

Q. In looking, Mr. Jarboe, if you would at Exhibit 3 again, "Proforma." In looking specifically to time, I know it has been four, five, six years probably since some of this work has been done, but based on my review of it in the last day or so, the vast majority of time would have been incurred by Paula Rindels on this file; is that right?

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A. Correct.

Q. And can you tell me generally what your tasks would have been with respect to this loan? What sorts of matters would you have been working on?

A. Well, I started out with intake, with the initial meeting with the client. The initial analysis of the proposed transaction and its structure.

Then when Paula took it over, I became a resource to her for her to use as she needs me.

Q. Was there anything specific, issues that you worked on with respect to the St. Regis matters that for whatever reason Paula did not handle and had you handle?

A. I could identify things with respect to which I made time entries on this printout. And those would be matters with respect to which Paula conferred with me.

Q. Well, I can read the time entries.

A. Uh-huh.

Q. I guess what I'm more concerned with is were there certain things that for whatever reason Paula said, "Mark, can you handle this part of the transaction and I will handle these parts of the transaction"?

A. No. No, she would have managed the entire transaction.

Q. Do you know what tasks Chris Karns was involved in doing on the St. Regis loans?

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A. I have a recollection that he was involved in matters dealing with the National Gaming Commission and New York Racing and Wagering Board, New York State Racing and Wagering Board.
Q. And both of those would have been done before closing in February of 1999?
A. I believe so, yes.
Q. Now, did you have any discussions with Miller & Schroeder about bank participants or the fact that the loan was going to be sold in participations before the loan closed in February of 1999?
A. No. I don't believe so.
Q. Did you know that Miller & Schroeder intended to sell the St. Regis loan to bank participants?
A. I may have. I don't recall if I knew that.
Q. Do you have any memories as to whether Miller & Schroeder intended to sell all of the loan to bank participants?
A. No.
Q. No, you don't have any memories?
A. No, I do not have any memories.
Q. Look, if you would, at Exhibit 6.
A. I have it here.
Q. Just for the record, let me tell you this is select pages from a very thick document. This was taken

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from the marketing book for the St. Regis I loan.
Okay?
A. Okay. I understand.
Q. And there are selective pages in here. I just want to ask you a couple of questions about this. If you look at the second page of the exhibit, GEN 0005, which is the salient data section of the marketing book for St. Regis I?
A. Uh-huh.
Q. Have you ever seen this before?
A. I don't believe I have seen this before today.
Q. Did you work at all with Miller & Schroeder in preparing the information that would be included in this salient data section of the marketing book?
MR. MARK: For the St. Regis loans?
MR. GALE: Yes.
A. No.
BY MR. GALE:
Q. Do you know whether or not Paula Rindels worked with Miller & Schroeder on this?
A. I have no knowledge.
Q. Did you ever discuss the salient data section of this with Paula Rindels or with anyone else?
A. I don't believe so.
Q. Look at, if you would, there is a participation

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agreement that is part of this exhibit. It begins at Page 0488.
A. I have it.
Q. Have you ever seen this participation agreement?
A. I don't believe I have seen it prior to the commencement of this lawsuit.
Q. Prior to the St. Regis loan closing in February of 1999 had you ever seen any participation agreement that had been used by Miller & Schroeder?
A. I don't believe so.
Q. Look, if you would, at Exhibit 8, please.
A. I have it here.
Q. This is the first page. It is just a fax from Patti Fredericks to Paula Rindels. The second page is a letter that references a loan agreement dated February 3, 1999.
Have you ever seen this document before?
A. (Reviewing.) I don't believe so. No.
Q. With respect to the documentation of the loan agreement that would have been prepared between Miller & Schroeder and the borrower, would that have been prepared by Paula Rindels?
A. Yes.
Q. Did you have anything to do with that?

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A. I don't recall that I did.
Q. What about preparation of the promissory note that was used in the St. Regis loans?
A. Same answer. I don't believe so.
Q. What about the escrow agreement?
A. I don't recall -- I didn't recall that this was an escrow agreement. I don't believe so, no.
Q. What about the notice and acknowledgment of pledge between the borrower, the lender and the Mohawk Tribe?
A. I don't recall doing anything on it. I may have, but I don't recall.
Q. Okay. Were there any of the documents that would be used in the closing of the St. Regis loans that you would have been responsible for preparing?
A. No.
Q. To the best of your knowledge all of those would have been prepared by Paula Rindels?
A. All of the ones with respect to what our firm was responsible for preparing, I would have believed that she would have done.
Q. Look, if you would, at Exhibit 10.
A. I have it here.
Q. Have you ever seen this before?
A. (Reviewing.) Not before today.

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Q. Do you know who prepared this?
A. I don't know. I can -- I have a suspicion, but I don't know.
Q. What would your suspicion be?
A. Chris Karns.
Q. What about this would lead you to that suspicion?
A. Our internal file number at the top of the first page referenced to Paula being in the Minneapolis office, discusses some of the text about -- about what the author did and whom the author contacted.
Q. To the best of your memory, though, you don't recall seeing this at any time before today?
A. I don't -- no, I don't recall seeing it.
Q. Look, if you would, at Exhibit 12.
A. I have it here.
Q. This is a letter from Walter Horn to Patti Fredericks dated February 19, 1999.
Did you know who Walter Horn is?
A. He was a lawyer for President. I think he was in-house counsel.
Q. Were you provided a copy of this document?
A. I don't recall ever seeing this document before.
Q. Is today the first --

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A. Before today. Yes, I'm sorry.
Q. All right. If you would look at the third page of this document, I understand you haven't seen it, but the last sentence there says, "Based upon Miller & Schroeder's review of this package and bank participant response to the NIGC issue, we would like to set a funding date as discussed during Monday's conference call."
Do you have any recollection as to what was going on on February 19th that was referred to in this step?
A. No.
Q. Look, if you would, at Exhibit 13.
A. I have it here.
Q. Do you know whose handwriting this is on any of these pages?
A. (Reviewing.) No.
Q. If you would look on the second page of the exhibit, it is actually the back page of the first one. It is a double-sided copy.
A. I see. Yes.
Q. There is a memo there from Patti Fredericks to the sales department dated February 18, 1999.
Have you ever seen this before?
A. I saw this -- for the first time, it is my recollection I saw this yesterday when a copy of this was provided to me by my counsel.

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Q. Did you personally ever have any discussions with Patti Fredericks at Miller & Schroeder?
A. I have known Patti for years, yes.
Q. Did you have any discussions with her on the St. Regis loans?
A. I believe she was in the initial meeting that I had with Steve Erickson and Larson, David Larson.
Q. Were you aware, Mr. Jarboe, that as the middle of February was approaching there was at least an issue out there as to whether an increase in the cap of the loan and a pledge agreement needed to -- that it needed to be provided to the NIGC? Were you aware that there was some issues going on with that?
A. I was aware of that issue, yes.
Q. And were you aware of it at that time? In other words, in the middle of February, approximately of 1999?
A. Yes.
Q. Did you have any conversations with Miller & Schroeder at that time about whether or not the loan should close with those issues being outstanding?
MR. MARK: Again, I don't know where we are going. This seems to me to be getting at the heart of the issue that is not part of this discovery.
MR. GALE: I appreciate that, and I don't

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intend to get to the merits. If he can answer this one and the next one, hopefully, you will see where I'm going with it.
MR. MARK: Well, again, I don't see how this has anything to do with it. Maybe you ought to explain it to me so I can understand where you are going with it.
MR. GALE: I'm wondering if he had any discussions with Miller & Schroeder about information that should be provided to participants about it.
MR. MARK: That is a different question. Do you understand that question?
A. No.
BY MR. GALE:
Q. Well, did you have any discussions with Miller & Schroeder in February of 1999 as to what information, if any, should be provided to bank participants regarding any issues with respect to the NIGC?
A. I do not recall any such discussions.
Q. Do you know whether or not Paula Rindels had any of those sort of discussions with Miller & Schroeder?
A. I would have no way of knowing.
Q. Okay. Do you have any knowledge about whether or not the participation agreement that was signed by the banks in the St. Regis loans was revised or amended based on some conversations or information that had been received

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from Chris Karns?
A. I was not aware of that before today.
Q. So, would it be fair to say then that in terms of any communications that Chris Karns had with Miller & Schroeder you were not aware, at least about the licensing issues and about participation agreement issues, you were not aware of that until today?
A. Correct.
Q. Were you aware, Mr. Jarboe, when you were doing this work for Miller & Schroeder on the St. Regis loan that they were designated the nominal payee of the loan?
MR. MARK: Designated where? Why don't you clarify that?
Q. In any documents?
A. I don't recall ever having seen that.
Q. Or hearing that?
A. Not before today.
Q. Did you understand when you were representing Miller & Schroeder in February of 1999 that if these loans went into default, that it would have been the bank participants who had the risk of loss of their investment?
A. I understood that a participant in the loan would risk its loss -- suffer the risk of loss of its investment if the loan went into default.
Q. And a loan participant?

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A. A loan participant or Miller & Schroeder as lender to the extent that it retained ownership of any part of the loan.
Q. If Miller & Schroeder did not retain ownership of any percent of the loan, then the risk of loss would have been totally on whatever banks had bought the participation interests, true?
A. Correct, on a certain basis, that's correct. Each -- each its own little part.
Q. So if a bank bought a dollar's worth of participation and the loan went into default, the bank was at risk of losing a dollar?
A. That's correct. That is the nature of a participation.
Q. Do you know whether or not the Dorsey firm had represented Miller & Schroeder on any loans that had gone into default prior to St. Regis?
A. I do not know.
MR. GALE: Let me just take a minute.
THE WITNESS: Let me just take a quick break.
MR. GALE: Go ahead.
(Off the record.)
MR. GALE: Let's mark this as Exhibit 16.
(JARBOE Deposition Exhibit 16 marked for identification.)
BY MR. GALE:
Q. Just one more matter, Mr. Jarboe.
You have in front of you --
MR. MARK: What exhibit is this?
MR. GALE: 16.
Q. -- an exhibit that has been marked as Exhibit 16. Have you ever seen this exhibit before?
A. No.
Q. In looking at the handwriting on it, do you have any knowledge as to whose handwriting that is?
A. No.
Q. It appears to reference a meeting, the date on it says January 13, 1998. But I think that is probably a -- I don't know. It is just my guess that it means a '99 meeting at Miller & Schroeder.
Do you recall attending a meeting at Miller & Schroeder on January 13, 1998?
A. Or '99?
Q. Or '99?
A. I don't recall any such meeting.
Q. Okay.
MR. MARK: Can I ask you where this document came from? Do you know with this Bates number BL?
MR. GALE: Are you asking me?

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MR. MARK: Yes. I'm sorry.
MR. GALE: I don't know.
MR. MARK: It is one of those funny cases where you have got all of the documents.
MR. GALE: We have got lots of cases, but we don't have all of them. The file is a little bit like yours I think.
(Off the record.)
MR. GALE: That's all I have. Thank you.
MR. MARK: I have no questions. We will read and sign.

(Whereupon, at 3:10 p.m., April 28, 2004, the foregoing proceeding was terminated.)

(UPON COMPLETION, forward this original Reading and Signing Certificate to Attorney Edward W. Gale, who already has the Sealed Original.)

MARK JARBOE

I, MARK JARBOE, do hereby certify that I have read the foregoing transcript of my Deposition and believe the same to be true and correct (or, except as follows, noting the page and the line number of the change or addition desired and the reason why):

Page	Line	Change or Addition	Reason

_____

Dated this _____ day of _____, 2004.

AMH

STATE OF MINNESOTA)
) SS.
COUNTY OF WASHINGTON)

Be it known that I took the Deposition of MARK JARBOE on the 28th day of April, 2004, at the Law Firm of Briggs & Morgan, 2200 IDS Center, Minneapolis, Minnesota;

That I was then and there a Notary Public in and for the County of Washington, State of Minnesota, and that by virtue thereof, I was duly authorized to administer an oath;

That the witness before testifying was by me first duly sworn to testify the whole truth and nothing but the truth relative to said cause;

That the testimony of said witness was recorded in Stenotype by myself and transcribed into typewriting under my direction, and that the deposition is a true record of the testimony given by the witness to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

That the cost of the original transcript has been charged to the party noticing the deposition unless otherwise agreed upon by Counsel, and that copies have been made available to all parties at the same cost, unless otherwise agreed upon by Counsel;

That the reading and signing of the deposition by the witness was executed as evidenced by the preceding page;

WITNESS MY HAND AND SEAL this 11th day of May, 2004.

Ann M. Holland
Court Reporter

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT
Case Type: Other - Civil
Court File No. _____

Bremer Business Finance Corporation,

Plaintiff,

vs.

Miller & Schroeder Investments Corporation,

Defendant.

COMPLAINT

COMES NOW Plaintiff Bremer Business Finance Corporation ("Bremer") and for its Complaint against Defendant Miller & Schroeder Investments Corporation ("Miller & Schroeder"), states and alleges as follows:

INTRODUCTION

1. This is an action for misrepresentation and fraud in the inducement of the sale to Plaintiff Bremer of a participation in a loan made by the Defendant Miller & Schroeder to President R.C.—St. Regis Management Company ("President R.C."), the developer and manager of a gambling casino owned by The St. Regis Mohawk Tribe (the "Tribe") of Hogansonburg, New York, a federally recognized Indian Tribe, and located on the Tribe's reservation lands in upstate New York. As shall be more fully explained below, the only substantial source of repayment for the loan to President R.C. was to be payments made by the Tribe pursuant to written agreements between the Tribe and President R.C. which required the approval of the National Indian Gaming Commission ("NIGC") before they could be enforced. Miller & Schroeder expressly and affirmatively represented to Bremer that the loan would not close or be funded unless and until the NIGC had approved the relevant agreements between the Tribe and

President R.C. In truth and in fact, however, and as Miller & Schroeder well knew when it sold a participation in the loan to Bremer, the loan had closed and been funded without having secured NIGC approval of the agreements needed to secure the source of repayment for the loan. Because payments under those agreements were so critical to the viability of the loan, Bremer would never have participated in the loan had it known that the loan had been closed and funded without having secured NIGC approval of the agreements between the Tribe and President R.C. The loan to President R.C. almost immediately went into default and now there is a great likelihood that the loan will never be repaid. Bremer's participation in the loan was induced through Miller & Schroeder's knowing and deliberate misrepresentation that the agreements between President R.C. and the Tribe securing repayment of the loan had been approved and were therefore enforceable. Because Bremer's participation in the loan was induced through fraud, Bremer now seeks rescission of the loan participation agreement and a full and complete refund of all consideration paid to Miller & Schroeder in connection with the purchase of that participation.

PARTIES

2. Bremer is a Minnesota corporation with a principal place of business in St. Paul, Minnesota. Bremer is a wholly-owned subsidiary of Bremer Financial Corporation. The Otto Bremer Foundation (the "Foundation") is the largest shareholder of Bremer Financial Corporation. The Foundation supports a wide variety of nonprofit agencies with grants and program-related investments that advocate their charitable purpose. Last year, the Foundation made $15.8 million in grants and program-related investments. More than 75% of the Foundation's grants were made in communities serviced by Bremer Financial Corporation.

3. Miller & Schroeder is a Minnesota corporation with a principal place of business in Minneapolis, Minnesota. Miller & Schroeder is a fully integrated asset origination company. Among other things, Miller & Schroeder originates loans, markets and sells participation interests in loans to banks and institutional investors, and services loans on behalf of its participants.

FACTUAL BACKGROUND

Miller & Schroeder's Marketing Practices

4. All loan transactions originated by Miller & Schroeder are reviewed by the Miller & Schroeder Credit Committee, which is comprised of Miller & Schroeder's senior managers who review and approve the creditworthiness of all transactions marketed and sold to loan participants which are not rated by independent credit rating agencies.

5. After a loan transaction is approved by its Credit Committee, a Miller & Schroeder banker assembles a marketing package for distribution to prospective participants which contains information necessary for the prospective loan participant to make an informed credit decision whether to acquire a participation interest in a particular loan transaction. Although Miller & Schroeder does not guarantee the accuracy of all information contained in its marketing materials and encourages prospective loan participants to conduct their own due diligence review of the loan by discussing any questions regarding the loan with Miller & Schroeder representatives, Miller & Schroeder does represent that it has no reason to believe that the information contained in its marketing materials is, in fact, in any respect inaccurate or untrue.

6. Miller & Schroeder holds itself out as having expertise in the origination, sale and servicing of loan transactions involving casinos and Indian tribes.

The President R.C.—St. Regis Management Contract

7. President R.C. is a New York general partnership.

8. The Tribe is a federally recognized Indian tribe occupying a reservation spanning the United States and Canadian border. The Tribe owns 14,648 acres of land in upstate New York and 7,400 acres in Quebec and Ontario, Canada.

9. On November 7, 1997, the Tribe and President R.C. entered into a Fourth Amended and Restated Management Agreement (the "Management Agreement"). A true and correct copy of the Management Agreement is attached hereto as Exhibit 1 and incorporated herein by reference. Pursuant to the terms of the Management Agreement, President R.C. was obligated to develop and manage a gaming facility (the "Project") on the Tribe's land. Pursuant to the terms of the Management Agreement, the Tribe was entitled to receive 75% of the net revenues (the "Tribe Revenues") generated by the Project and President R.C., as compensation for its management services, was entitled to receive the other 25% of net revenues (the "Management Fees"). Pursuant to the terms of the Management Agreement, President R.C. was required to provide the capital needed for all development costs and expenses relating to the Project (the "Development Expenses"). Pursuant to the terms of the Management Agreement, the Tribe was required to reimburse President R.C. for all Development Expenses, not to exceed $20,000,000. Pursuant to the terms of the Management Agreement, $12,000,000 of the Development Expenses would be repaid through a $12,000,000 loan from President R.C. to the Tribe, amortized over five years with an annual interest rate of 13.5% (the "Tribal Loan"). Under the Management Agreement, the remaining Development Expenses were to be repaid by the Tribe on a monthly basis in increments of $500,000 (the "Guaranteed Payment"). Pursuant to the

terms of the Management Agreement, the Tribal Loan and the Guaranteed Payment were to be paid with proceeds of the Tribe Revenues.

10. The NIGC is an independent federal regulatory agency which was created in 1988, when Congress enacted the Indian Gaming Regulatory Act ("IGRA"). The stated mission of the NIGC is to regulate Indian gaming "to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to assure that gaming is conducted fairly and honestly by both the operator and the player." Under the terms of the IGRA, agreements between Indian Tribes and non-Indian managers, such as President R.C., cannot be implemented or enforced until they have received the approval of the NIGC.

11. The Management Agreement was approved by the NIGC on December 26, 1997.

12. By February of 1999, President R.C. claimed that it had already provided approximately $15,565,000 to the Project in Development Expenses. In order to complete the Project, President R.C. claimed that it needed to invest an additional approximately $12,182,000 in Development Expenses (the "Remaining Costs"). In order to ensure that it received reimbursement from the Tribe for the Remaining Costs, the Tribe and President R.C. entered into an amendment to the Management Agreement dated on or about February 11, 1999 (the "Amendment"). Pursuant to the Amendment, the Management Agreement was amended to require the Tribe to reimburse President R.C. for Development Expenses in an amount up to $28,150,000. In order to be effective and enforceable against the Tribe, the Amendment had to be approved by the NIGC.

The President R.C. Loans

13. President R.C. requested loans from Miller & Schroeder to finance the Remaining Costs. Miller & Schroeder agreed to provide President R.C. with two different loan facilities. The first loan facility (the "Senior Lien Financing") was a loan by Miller & Schroeder to President R.C. in the original principal amount of approximately $8,690,000. Proceeds of the Senior Lien Financing were to be used by President R.C. primarily to fund the completion of the construction of the Project. The second loan facility (the "Senior Subordinated Lien Financing") was a loan by Miller & Schroeder to President R.C. in the original principal amount of $3,492,000. Proceeds of the Senior Subordinated Lien Financing were to be used by President R.C. primarily to fund the acquisition costs for furniture, fixtures and certain equipment for the Project.

14. Repayment of the Senior Lien Financing and the Senior Subordinated Lien Financing was to be secured by a pledge of or security interest in President R.C.'s interest in the Management Fees and the Tribe Revenues (the "Pledged Revenues"). Pursuant to the Loan Agreement (as hereinafter defined) between Miller & Schroeder and President R.C., the Pledged Revenues were to be deposited into an escrow account for payment and distribution on a priority basis, as follows:

First Priority:	Payment of any past due monthly payments on the Senior Lien Financing;
Second Priority	Payment of the monthly payments on the Senior Lien Financing;
Third Priority:	Payment of any past due payments related to the Senior Subordinated Lien Financing ; and
Fourth Priority:	Payment of the monthly payments relating to the Senior Subordinated Lien Financing.

15. On February 24, 1999 (the "Closing Date"), Miller & Schroeder and President R.C. closed and funded the Senior Lien Financing and the Senior Subordinated Lien Financing (collectively, the "Loans"). In connection with the February 24, 1999 closing of the Senior Subordinated Lien Financing, the following documents, among others (the "Loan Documents"), were executed and delivered:

a. President R.C. and Miller & Schroeder executed a Loan Agreement dated as of February 24, 1999, a true and correct copy of which is attached hereto as Exhibit 2 and incorporated herein by reference;

b. President R.C. executed and delivered to Miller & Schroeder a promissory note dated February 24, 1999, in the original principal amount of $3,492,000, a true and correct copy of which is attached hereto as Exhibit 3 and incorporated herein by reference;

c. President R.C., Miller & Schroeder and U.S. Bank Trust, National Association executed an Escrow Agreement dated as of the 24th day of February, 1999, a true and correct copy of which is attached hereto as Exhibit 4 and incorporated herein by reference;

d. President R.C., the Tribe and Miller & Schroeder executed and delivered a Notice and Acknowledgement of Pledge, dated February 12, 1999 (the "Pledge Agreement"), a true and correct copy of which is attached hereto as Exhibit 5 and incorporated herein by reference;

e. President R.C. executed and delivered to Miller & Schroeder a Closing Certificate of Borrower (the "Closing Certificate") dated February 24, 1999, a true and correct copy of which is attached hereto as Exhibit 6 and incorporated herein by reference; and

f. Walter K. Horn, Senior Vice President and General Counsel of President R.C., executed and delivered to Miller & Schroeder an Opinion of Counsel dated February 24, 1999 (the "Opinion of Counsel"), a true and correct copy of which is attached hereto as Exhibit 7 and incorporated herein by reference.

Failure to Obtain NIGC Approval

16. While preparing for the closing of the Loans, Miller & Schroeder knew that it was critically important to obtain NIGC approval of the Amendment. Without NIGC approval, Miller & Schroeder knew that the Amendment would not be enforceable against the Tribe. Without an enforceable Amendment, Miller & Schroeder knew that the Tribe would not be

obligated to reimburse President R.C. for more than $20,000,000 of the Development Expenses. Without full reimbursement of the Development Expenses, Miller & Schroeder knew that President R.C.'s ability to repay the Loans would be materially impaired. Accordingly, Miller & Schroeder made NIGC approval of the Amendment an express condition precedent to the closing of the Loans.

17. As experts in Indian gaming, Miller & Schroeder also knew that it was critically important to obtain NIGC approval of the Pledge Agreement. Without NIGC approval, Miller & Schroeder knew that the Pledge Agreement would not be enforceable against the Tribe. The enforceability of the Pledge Agreement was critical to the repayment of the Loans because in the Pledge Agreement the Tribe agreed, among other things: (i) to pay the Pledged Revenues into an escrow account designated by Miller & Schroeder and President R.C.; (ii) that its obligation to pay the Pledged Revenues survived any termination of the Management Agreement; (iii) to pay all Pledged Revenues to the escrow account without any set-off or deduction whatsoever, notwithstanding any prior termination of the Management Agreement, or any defense, set-off, counterclaim or recoupment arising out of any claim against President R.C. or Miller & Schroeder; (iv) that it may be sued by Miller & Schroeder before a United States District Court or an appropriate state court to enforce or interpret the terms of the Pledge Agreement; (v) to waive any right to proceed before any Tribal Court; and (vi) to waive its sovereign immunity from suit to the extent necessary to allow Miller & Schroeder to bring any action to enforce or interpret the Pledge Agreement. Without an enforceable Pledge Agreement, Miller & Schroeder knew that it could not compel the Tribe to comply with the terms of the Pledge Agreement and that the prospects for repayment of the Loans would be materially impaired. Accordingly,

Miller & Schroeder made NIGC approval of the Pledge Agreement an express condition precedent to the closing of the Loans.

18. On the Closing Date, Miller & Schroeder closed and funded the Loans even though NIGC approval of the Amendment or the Pledge Agreement had not yet been obtained. As of the date of this Complaint, the NIGC has still not approved the Amendment or the Pledge Agreement. As a result, neither the Amendment nor the Pledge Agreement is enforceable against the Tribe. The Tribe has declared that neither the Amendment nor the Pledge Agreement is enforceable against it.

19. On and after the Closing Date, Miller & Schroeder knew that the NIGC had not approved the Amendment or the Pledge Agreement. Consequently, Miller & Schroeder knew that neither the Amendment nor the Pledge Agreement was enforceable against the Tribe. Miller & Schroeder therefore also knew that the prospect for repayment of the Loans was materially impaired.

Miller & Schroeder's Marketing of the Senior Subordinated Lien Financing to Bremer

20. Upon information and belief, Miller & Schroeder, soon after the Closing Date, marketed and sold participation interests for 100% of the Senior Lien Financing and for approximately $1,492,000 of the Senior Subordinated Lien Financing. This left Miller & Schroeder with ownership of a $2.0 million portion of the Senior Subordinated Lien Financing (hereinafter, the "$2.0 Million Participation"). Upon information and belief, Miller & Schroeder temporarily "warehoused" the $2.0 Million Participation with a bank under an agreement which ultimately would have required Miller & Schroeder to buy back the $2.0 Million Participation in the event Miller & Schroeder could not find another party to whom they could sell the $2.0 Million Participation. Miller & Schroeder did not want to retain the $2.0 Million Participation

because it knew the NIGC had not approved the Amendment or the Pledge Agreement and, as a result, Miller & Schroeder knew that the prospects for payment of the Loans had been materially impaired.

21. At or about the time of the Closing Date, Miller & Schroeder, through Michael Frank ("Mr. Frank"), one of its sales representatives, contacted Bud Jensen ("Mr. Jensen"), one of Bremer's officers, in an effort to sell the $2.0 Million Participation to Bremer. Mr. Frank, at all times relevant hereto and in all circumstances alleged in this Complaint, acted on behalf and for the benefit of Miller & Schroeder. Mr. Jensen, at all times relevant hereto and in all circumstances alleged in this Complaint, acted on behalf of Bremer. Mr. Jensen had previous business dealings with Mr. Frank and Miller & Schroeder and trusted that Miller & Schroeder and Mr. Frank would advise Bremer of any material problems with the Loans and honestly and candidly disclose any inaccuracies in written marketing materials given to Bremer to persuade Bremer to purchase a participation in the Loans. Miller & Schroeder and Mr. Frank emphasized to Mr. Jensen Miller & Schroeder's and its law firm's expertise in the area of Indian gaming financing. Mr. Jensen trusted that Miller & Schroeder had properly documented the Loans and that the Loan Documents were enforceable according to their terms.

22. In their efforts to sell the $2.0 Million Participation to Bremer, neither Miller & Schroeder nor Mr. Frank ever told Mr. Jensen or any other representative of Bremer that Miller & Schroeder had closed on and funded the Loans without having NIGC approval of the Amendment or the Pledge Agreement. Nor did Mr. Frank or Miller & Schroeder tell Mr. Jensen or any other representative of Bremer that the Amendment and the Pledge Agreement were not enforceable against the Tribe.

23. In their efforts to sell the $2.0 Million Participation to Bremer, Miller & Schroeder and Mr. Frank affirmatively represented to Mr. Jensen that: (i) the NIGC had approved the Amendment and the Pledge Agreement; and (ii) the Loan Documents were enforceable according to their terms.

24. At or about the time of the Closing Date, Mr. Frank and Miller & Schroeder delivered an Offering Book to Bremer and Mr. Jensen dated February, 1999 (the "Offering Book"). A true and correct copy of the Offering Book is attached hereto as Exhibit 8 and incorporated herein by reference. Mr. Frank and Miller & Schroeder delivered the Offering Book to Bremer and Mr. Jensen in connection with efforts to induce Bremer to purchase the $2.0 Million Participation. The Offering Book was provided to Bremer and Mr. Jensen by Mr. Frank so Bremer could evaluate a potential investment in the Senior Subordinated Lien Financing.

25. In the Offering Book, Miller & Schroeder expressly stated that it would not fund the Loans until after appropriate NIGC approvals had been obtained. In the "Salient Data" portion of the Offering Book, Miller & Schroeder represented to Bremer that:

> [President R.C.] will provide the capital necessary for all development costs and expenses for the Project ("Development Fees"). The Development Fees have been capped at approximately $20 million dollars, however, the Tribe and [President R.C.] amended the [Management] Agreement to increase the Development Fees to approximately $28 million dollars and have submitted the Amendment to the National Indian Gaming Commission ("NIGC") for approval. NIGC approval is a requirement to funding the Senior Lien and Subordinated Senior Lien Financings.

26. Shortly after the Closing Date, Mr. Frank and Miller & Schroeder delivered to Bremer a package of signed documents and materials relating to the closing of the Senior Subordinated Lien Financing (the "Loan Package"). The Loan Package included, among other things, copies of the Loan Documents, including the Pledge Agreement, the Opinion of Counsel

and the Closing Certificate. Mr. Frank and Miller & Schroeder delivered the Loan Package to Bremer in connection with efforts to induce Bremer to purchase the $2.0 Million Participation. When Mr. Frank and Miller & Schroeder delivered the Loan Package to Bremer, they intended and expected that Bremer would rely on information contained therein in connection with its determination of whether to purchase the $2.0 Million Participation. When Mr. Frank and Miller & Schroeder delivered the Loan Package to Bremer, they intended and expected that Bremer would rely on information, statements and representations contained in the Loan Package as true and accurate information, statements and representations.

27. When Mr. Frank and Miller & Schroeder delivered the Loan Package to Bremer, they represented to Bremer that the NIGC approved the Amendment and the Pledge Agreement. In Paragraph 13 of the Closing Certificate which was included in the Loan Package, President R.C. represented that Miller & Schroeder had a perfected first priority security interest in the Pledged Revenues. In Paragraph 11 of the Closing Certificate, President R.C. represented that "all certificates, permits, licenses and other authorizations of Federal, State and Tribal governmental bodies or authorities which are necessary to permit the financing provided by Miller & Schroeder as contemplated in the Loan Documents [the term Loan Documents is defined to include the Pledge Agreement] have been obtained and are in full force and effect." (emphasis added). By delivering a copy of the Closing Certificate to Bremer, Mr. Frank and Miller & Schroeder represented to Bremer that the NIGC had approved the Pledge Agreement.

28. A copy of the Opinion of Counsel was also included within the Loan Package that Mr. Frank and Miller & Schroeder provided to Bremer. In Paragraph 8 of the Opinion of Counsel, Mr. Horn represents that it is his opinion that:

> No consent, approval, order or authorization of, or designation, registration, declaration, qualification or filing with any regulatory or governmental authority, including but not limited to the Secretary of the Interior, the Commissioner of Indian Affairs or the United States Department of Interior, Bureau of Indian Affairs, which has not been obtained, is necessary or required by law as a prerequisite to the validity, perfection, or enforceability of the Loan Documents [the term Loan Documents is defined to include the Pledge Agreement].

By delivering a copy of the Opinion of Counsel to Bremer, Miller & Schroeder represented to Bremer that the NIGC had approved the Pledge Agreement.

29. Also included within the Loan Package was a copy of the Pledge Agreement. Copies of the Amendment and the Management Agreement were also included in the Loan Package which Mr. Frank and Miller & Schroeder delivered to Bremer. By delivering copies of the Pledge Agreement, the Management Agreement, and Amendment to Bremer, Miller & Schroeder represented to Bremer that the NIGC approved the Pledge Agreement and the Amendment, and that both documents were enforceable according to their terms.

30. During the period between at least February of 1999 and May 20, 1999, representatives of Bremer and Miller & Schroeder continued to communicate about the Loans and the $2.0 Million Participation. During this Period, Mr. Jensen asked Mr. Frank for additional information concerning the Loans in connection with Bremer's due diligence efforts. During this period, Mr. Frank made representations to Mr. Jensen and Bremer regarding President R.C.'s equity in its transaction with the Tribe and regarding President R.C.'s projected available cash flow for repayment of the Loans. The representations made by Mr. Frank to Mr. Jensen regarding President R.C.'s financial condition were based on the assumption that the NIGC had approved the Amendment and the Pledge Agreement and that the Amendment and the Pledge Agreement were enforceable against the Tribe. Although the accuracy of those representations depended upon the validity and enforceability of the Amendment and Pledge

Agreement, Mr. Frank and Miller & Schroeder never told Bremer that NIGC approval had not been obtained and, therefore, the accuracy of their representations was contingent or conditional. When Mr. Frank made these representations to Mr. Jensen, he and Miller & Schroeder knew that Miller & Schroeder closed and funded the Loans without obtaining NIGC approval of the Amendment or the Pledge Agreement. When he made these representations to Mr. Jensen, Mr. Frank and Miller & Schroeder also knew that the Amendment and the Pledge Agreement were not enforceable against the Tribe.

31. On or about May 20, 1999, Bremer purchased the $2.0 Million Participation by acquiring a $2.0 million participation interest in the Senior Subordinated Lien Financing. In connection with the purchase of the $2.0 Million Participation, Bremer in or about May of 1999, executed that certain Participation Agreement dated as of March 1, 1999 (the "Participation Agreement"), a true and correct copy of which is attached hereto as Exhibit 9 and incorporated herein by reference, and delivered a wire transfer of $2.0 million dollars to Miller & Schroeder on May 20, 1999.

32. Less than one month after Bremer funded its acquisition of the $2.0 Million Participation, President R.C. advised Miller & Schroeder that it would default under the Loans and requested a deferral of principal payments through September 20, 1999. Since that time, President R.C. has committed further defaults on its obligations under the Loans. As a result, Bremer has not received the payments which were scheduled under the $2.0 Million Participation and the Senior Subordinated Lien Financing.

33. Miller & Schroeder has commenced litigation against the Tribe and President R.C. as a result of the defaults under the Loans. However, because NIGC approval was never obtained, the Tribe has taken the position that the Amendment and the Pledge Agreement are

unenforceable and the Tribe has refused to honor its obligations under the Amendment and the Pledge Agreement.

COUNT ONE – FRAUD IN THE INDUCEMENT

34. Miller & Schroeder knew at the time it made them that its representations to Bremer that the NIGC had approved the Amendment and the Pledge Agreement were false.

35. Miller & Schroeder's representations to Bremer that the NIGC had approved the Amendment and the Pledge Agreement were material to Bremer's decision to purchase the $2.0 Million Participation.

36. Miller & Schroeder's representations to Bremer that the NIGC had approved the Amendment and the Pledge Agreement was made with the intent to induce Bremer to purchase the $2.0 Million Participation.

37. Bremer in fact relied upon Miller & Schroeder's representations to Bremer that the NIGC had approved the Amendment and the Pledge Agreement in deciding to purchase the $2.0 Million Participation.

38. Bremer's reliance upon Miller & Schroeder's representations to Bremer that the NIGC had approved the Amendment and the Pledge Agreement was reasonable.

39. Had Bremer known that the Amendment and the Pledge Agreement had not received NIGC approval and accordingly were unenforceable, Bremer would never have purchased the $2.0 Million Participation.

COUNT TWO – NEGLIGENT MISREPRESENTATION

40. Miller & Schroeder's representation to Bremer that the Amendment and the Pledge Agreement had been approved by the NIGC was made in the course of Miller &

Schroeder's business and in connection with a transaction in which Miller & Schroeder had a pecuniary interest.

41. Miller & Schroeder's representation to Bremer that the Amendment and the Pledge Agreement had been approved by the NIGC was made for the guidance of Bremer in its consideration of the purchase of the $2.0 Million Participation.

42. Miller & Schroeder's representation to Bremer that the Amendment and the Pledge Agreement had been approved by the NIGC was false.

43. In making the representation to Bremer that the Amendment and the Pledge Agreement had been approved by the NIGC, Miller & Schroeder failed to exercise reasonable care or competence in obtaining or communicating information to Bremer concerning the Loans and the $2.0 Million Participation.

44. In purchasing the $2.0 Million Participation, Bremer justifiably relied upon Miller & Schroeder's false representation that the Amendment and the Pledge Agreement had been approved by the NIGC.

45. Bremer's reliance upon Miller & Schroeder's false representation that the Amendment and the Pledge Agreement had been approved by the NIGC has caused Bremer substantial pecuniary loss.

COUNT THREE – BREACH OF CONTRACT

46. In the Participation Agreement, Miller & Schroeder agreed to manage and administer the Loans in accordance with the customary policies and procedures under which it administers loans for its own account and that it would be liable to Bremer for any damage to Bremer arising from its own willful misconduct or gross negligence in connection with the Loans.

47. Miller & Schroeder's funding of the Loans even though the Amendment and the Pledge Agreement had not received NIGC approval was willful misconduct in breach of the Participation Agreement because Miller & Schroeder had affirmatively and specifically represented that it would not fund the Loans unless and until such approval had been obtained.

48. Miller & Schroeder's funding of the Loans even though the Amendment and the Pledge Agreement had not received NIGC approval was grossly negligent in breach of the Participation Agreement because the prospect for repayment of the Loans was materially impaired by the absence of NIGC approval of those documents.

49. By reason of Miller & Schroeder's breach of the Participation Agreement, Bremer has suffered significant pecuniary losses.

PRAYER FOR RELIEF

WHEREFORE, Bremer respectfully requests that judgment be entered as follows:

1. Rescinding the $2.0 Million Participation and awarding Bremer damages against Miller & Schroeder in the amount of $2,000,000.00, the consideration paid for the $2.0 Million Participation, together with interest thereon from May 20, 1999, to the date of judgment herein;

2. Alternatively, awarding Bremer damages in an amount exceeding $50,000.00, the precise amount to be determined at trial;

3. Awarding Bremer its costs and disbursements herein; and

4. Awarding Bremer such other and further relief as the Court may deem just in the premises.

Dated: December 20, 2000.

WINTHROP & WEINSTINE, P.A.

By: _____

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.21(1), Subd. 2, costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the Court.

Dated: December 20, 2000.

WINTHROP & WEINSTINE, P.A.

By: _____

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